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CONSOLIDATED

STATUTES OF NEBRASKA,

1891,

Being a Compilation of All the Laws of a General Nature
in Force August 1, 1891.

BASED UPON THE REVISED STATUTES OF 1866.

**EMBRACING ALL OF SAID STATUTES UNREPEALED, AND ALL SUBSEQUENT ACTS
NOW IN FORCE, SO ARRANGED AS TO CONSOLIDATE UNDER ONE
HEADING ALL ANALOGOUS ACTS.**

THE CODES, STATE AND FEDERAL CONSTITUTIONS, MAGNA CARTA, ETC.

CAREFULLY ANNOTATED.

Prepared Under Authority of the Legislature by
J. E. COBBEY, Esq., of the Beatrice Bar,
Author of "Law of Replevin."

LINCOLN, NEB.:
STATE JOURNAL COMPANY, PRINTERS.
1891.

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Rec. July 18, 1902.

AUTHENTICATION.

UNITED STATES OF AMERICA,
STATE OF NEBRASKA, SECRETARY'S OFFICE. } ss.

I, John C. Allen, secretary of state of the state of Nebraska, do hereby certify that the laws as printed in the within volume (known as Consolidated Statutes of Nebraska, by J. E. Cobbey) are true copies of the laws of Nebraska (of which they purport to be copies as in said volume indicated), as shown by the records of my office.

That said Consolidated Statutes contain all laws of a general nature, in the Revised Statutes of 1866, and all subsequent general enactments of the legislature, in force at this date, and that the said volume was prepared and published by authority of the legislature.

In testimony whereof I have hereunto set my hand and affixed the great seal of the state of Nebraska.

Done at Lincoln, this 15th day of December, A. D. 1891.

[SEAL.] JOHN C. ALLEN,
Secretary of State.

STATE OF NEBRASKA,
COUNTY OF GAGE. } ss.

I, J. E. Cobbey, appointed by the legislature of the state of Nebraska to compile, annotate, edit, and publish all the general laws of the state now in force, do hereby certify that the laws contained in this volume are true and accurate copies of the originals, as shown by the Revised Statutes of 1866, and the original rolls now on file in the office of the secretary of state.

J. E. Cobbey
Compiler.

This work is respectfully dedicated to the members of the Gage County Bar, in recognition of their ability and friendship, and to the users of statutes generally, in acknowledgment of the many valuable suggestions and assistance received in its preparation by

THE COMPILER.

PREFACE.

In efforts towards the reduction of statute law to a symmetrical and convenient form, three stages may be noted, viz., compilation, consolidation, and revision. To the second, only, of these does the present work aspire. Its editor is not clothed with the powers of a reviser, and he has not attempted to prepare a *revision* of the statutes, however desirable such an achievement may be.

Nevertheless, it has been sought to make this more than a mere compilation in which laws should be arranged according to a chronological or other mechanical plan, or no plan at all, or in which the system of arrangement employed by some pioneer codifier should be followed with slavish exactness. The design of this work is that of a *consolidation* of existing laws, and accordingly great pains have been taken to group all analogous acts under titles at once the most comprehensive and appropriate, so that the investigator, in any subject upon which the legislature has spoken, may be able to consult in one place all its kindred enactments which are now in force. This is one of the distinctive aims of the work; how far it has been accomplished is for its patrons to determine.

As to the ground plan of a work of this nature, such as the naming and insertion of chapters, two systems are now in vogue. The more modern of these, which may be termed the analytical, is that formulated by Dr. Thomas Erskine Holland in his treatise on Jurisprudence; adopted by Mr. F. J. Stimson in his exhaustive work on American Statute Law; and first, to my knowledge, employed in an edition of statutes by Emlin McLain, whose Annotated Code of Iowa has thus become a model of systematic arrangement and precise legal nomenclature. By this system the entire body of the law is classified upon a scientific basis, and each act and chapter is distributed according to its subject-matter.

The other system, the alphabetical, is the one most commonly employed by codifiers. Under it, the chapters are arranged and inserted in the order of the first letters of their titles. While the first named system is unquestionably the more logical, it has not been deemed wise to make too radical a change from the plan so long in use in this state. The external features of the alphabetical system are therefore retained, but, as stated above, care has been taken to make the titles of the chapters sufficiently comprehensive to include the whole law of the subject, and thus to avoid that severing and scattering of kindred subjects, which is one of the most serious defects of the old plan. The analytical system has been thus dwelt upon, in order to call attention to a plan of arrangement whose merits will hardly fail of appreciation the more they are studied.

The theory of the chapter, according to this work, is that of a group of acts; and it has been the aim to reproduce each act as nearly as possible as in the original.

The title is inserted in the text, and only those portions are omitted which are local or obsolete. The plan in distributing the different acts throughout a chapter is to group, first, those whose provisons are general; second, the more specific; and lastly, those of a miscellaneous character. For economy of space, as well as for convenience, the original session laws are referred to by the year and page only. For enactments prior to 1866, the revision of that year is cited, as the legislature has made it the best evidence of what the law of that period is; and has declared it to be the standard in case of discrepancies between it and the sessional volume. (R. S. 1866, p. 683, sec. 2; Laws 1867 (Ter.), p. 7.) The titles and sub-headings of the Codes are printed as in the original.

I have employed the "interior catch word system" in every instance where it was at all available, because (1) it adds nothing to the section which is not a part of the law; (2) it is a saving of space; and (3) it is believed by giving prominence to appropriate words distributed through the section a much better idea of its contents can be conveyed, than by the old bracketed initial word system, and especially would this advantage be seen in the long sections. As this system was new to my assistants, as well as to myself, we may not always have been judicious in our selection of words to be made prominent by the black letters, but this does not militate against the general merits of what I believe will be the system of the future.

The consecutive numbering of sections has been adopted as that used in the best statute compilations of to-day. The original code numbers have also been retained where those sections have not been repealed.

In the annotations the aim has been to give in a few words the gist of the decision as it affects the particular statute under consideration, remembering that an annotated statute is not intended to take the place of a digest, and in grouping the several annotations under one section, to place the more specific first, and those which merely refer to the section in a general way last. To meet the general demand of the profession outside of the large towns, I have referred to the Northwestern Reporter as well as to the state reports: with this double citation the title of the case is not necessary, it has therefore been omitted. The volume of the state report is printed in black letter or antique type to distinguish it from the page of the report which immediately follows it.

In indexing I have referred to section numbers.

I am indebted to Charles S. Lobingier, Esq., known to the bar as a contributor to the American & English Encyclopædia of law, and as the assistant reporter of the supreme court, whose work and suggestions in all of its branches, but especially in the matter of arrangment, have been very valuable. In preparing the annotations I was also assisted by L. M. Pemberton, Esq., S. D. Killen, Esq., and R. W. Sabin, Esq., of the Beatrice bar, and T. D. Cobbey, Esq., now of the Denver bar, and to their thorough and painstaking labor much of the excellence of this branch of the work is due.

It has been generally understood that where the legislature passed laws without an emergency clause they took effect, under our present constitution, three months from the day on which the legislature adjourned; and as the supreme court had never passed upon that section I followed the generally accepted rule in stating when each act took effect. After much of the manuscript for this work was prepared the attorney general at the request of the sectretary of state, gave an opinion construing that section so far as it applied to the laws passed by the last legislature, under that opinion, which is law until the supreme court speaks, the laws of the last legislature take effect August 1 instead of July 4, and I have so marked them. But in the absence of an opinion by the supreme court I have not given this opinion a wider application, though there is no reason why it should not apply to all laws passed, under our present constitution, without an emergency clause. Following is the opinion referred to, furnished me by the attorney general for publication at my request:

OFFICE OF ATTORNEY GENERAL,
LINCOLN, NEB., April 30, 1891.

Hon. John C. Allen, Secretary of State.

DEAR SIR: Your favor bearing date April 29, 1891, has been received by me, and the same has been placed on file in this office. I note that you desire an opinion as to the date the laws passed by the 22d Legislative Assembly go into effect. I have the honor to reply as follows:

The constitution of the state of Nebraska provides that "No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the legislature shall, by a vote of two-thirds of all members elected to each house, otherwise direct." (See section 24, art. 3, Const. of Nebraska.)

The word "calendar" means a recorded division of time into periods; a register of the year; an almanac. The word "month" means the twelfth part of the calendar year. A calendar month is a solar month as it stands in the almanac. I take it, the constitution makers did not desire the laws to take effect in ninety days, or they would have so stated. They in their wisdom elected the time to be three calendar months. This in my judgment precludes us from considering any part or parts of calendar months. The laws take effect at the expiration of three full calendar months. The legislature adjourned April 4.

I have examined this question with much care, and find no authority which will justify you in doing other than excluding the part of the calendar month known as April. The laws passed by the 22d Legislative Assembly, without an emergency clause, do not take effect until August 1, 1891.

I remain, your most obedient servant,

GEO. H. HASTINGS,
Attorney General.

Before entering actively upon this undertaking, I sent out a large number of postals, asking for suggestions from attorneys and others versed in such matters, as to the questions liable to arise in its preparation. I was gratified by the large number of responses, and the valuable suggestions made. As my powers were only those of a *compiler*, and not of a *reviser*, many of the changes suggested could not be made. The numerous repetitions and other errors which creep into a statute with successive legislative enactments, and the vast body of laws (demanded by the growth of the state) enacted since the revision of 1866, impresses upon me the necessity of a thorough and speedy revision of our laws by act of the legislature. I give a translation of the original magna charta, which Green in his History of the English People says: "Marks the transition from the age of traditional rights preserved in memory to the age of written legislation, parliaments, and statutes, and which is looked back to from age to age by patriots as the basis of English liberty." But on account of lack of space it was impossible to include much preliminary matter asked for that might properly find place in such a work.

In conclusion, I desire to again express my thanks to the many hundred friends for valuable suggestions made, and if this work shall prove to be a step in advance toward a perfect statutory compilation, my corps of assistants, as well as myself, will feel that our labors have not been in vain.

BEATRICE, NEBRASKA, December 20, 1891.

J. E. Cobbey

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MAGNA CARTA.

THE GREAT CHARTER OF LIBERTIES OF KING JOHN.

Granted at Runnymede, June 15, A.D. 1215, in the Seventeenth Year of His Reign.

John, by the grace of God King of England, Lord of Ireland, DUKE OF NORMANDY, Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his lieges, greeting. Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of all our ancestors and heirs, and unto the honour of God and the advancment of Holy Church, and amendment of our Realm, by advice of our venerable Fathers, STEPHEN, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, HENRY, Archbishop of Dublin, WILLIAM of London, PETER of Winchester, JOCELIN of Bath and Glastonbury, HUGH of Lincoln, WALTER of Worcester, WILLIAM of Coventry, BENEDICT of Rochester, Bishops; of Master PANDULPH, Sub-Deacon and Familiar of our Lord the Pope, Brother AYMERIC, Master of the Knights-Templars in England; and of the Noble Persons, WILLIAM MARESCALL, Earl of Pembroke, WILLIAM, Earl of Salisbury, WILLIAM, Earl of Warren, WILLIAM, Earl of Arundel, ALAN DE GALLOWAY, Constable of Scotland, WARIN FITZ GERALD, PETER FITZ HERBERT, and HUBERT DE BURGH, Seneschal of Poitou, HUGH DE NEVILLE, MATTHEW FITZ HERBERT, THOMAS BASSET, ALAN BASSET, PHILIP OF ALBINEY, ROBERT DE ROPPELL, JOHN MARESCHAL, JOHN FITZ HUGH, and others our liegemen, have, in the first place, granted to God, and by this our present Charter confirmed, for us and our heir for ever:

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence, that the freedom of elections, which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our Charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which charter we shall observe, and we will do it to be faithfully observed by our heirs for ever.

2. We also have granted to all the freemen of our kingdom, for us and for our heirs for ever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs for ever: If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owes a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

Text here followed is Prof Creasy's translation, Eng. Const., p. 120.

3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them; and if we sell or give to anyone the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper, so long as he shall have custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which term her dower shall be assigned.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the securities of the debtor be distrained so long as the principal debtor is sufficient for the payment of the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt fall into our hands we will only take the chattel mentioned in the deed.

11. And if anyone shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue of the debt shall be paid, saving however the service due to the lords; and in like manner shall it be done touching debts due to others than the Jews.

12. No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid a reasonable aid. In like manner it shall be concerning the aids of the City of London.

13. And the City of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore we will and grant, that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

14. And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls and greater barons of the realm, singly by our letters. And furthermore we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business of the day shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid.

16. No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

18. Assizes of novel disseisen, and of mort d'ancestor, and of darrien presentment, shall not be taken but in their proper counties, and after this manner: We, or, if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year, who, with four knights, chosen out of every shire by the people, shall hold the said assizes, in the county, on the day, and at the place appointed.

19. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it, saving to him his contenement; and after the same manner a merchant, saving to him his merchandise, and a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighborhood.

21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offence.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently and of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the Crown.

25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without any increase, except in our demesne manors.

26. If any one holding of us a lay-fee die, and the sheriff, or our bailiffs, show our letters patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and inroll the chattels of the dead, found upon his lay-fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfill the testament of the dead, and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church; saving to every one his debts which the deceased owed to him.

28. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good will of the seller.

29. No constable shall distrain any knight to give money for castle guard, if he himself will do it in his person, or by another able man in case he cannot do it through any reasonable cause. And if we lead him, or send him in an army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, but by the good-will of the said freeman.

31. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

32. We shall retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.

33. All wears for the time to come shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea coast.

34. The writ which is called *præcipe*, for the future, shall not be made out to anyone, of any tenement, whereby a freeman may lose his court.

35. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjeets, that is to say, two ells within the lists; and it shall be of weights as it is of measures.

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

37. If any do hold of us by fee-farm, or by socage, or by burgage, and he holds also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage; neither will we have the custody of such fee-farm, socage, or burgage, except knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty that holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witness to prove it.

39. No freeman shall be taken or imprisoned or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

40. We will sell to no man, we will not deny to any man, either justice or right.

41. All merchants shall have safe and secure conduct, to go out of, and to come into England, and to stay there, and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any evil tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

42. It shall be lawful, for the time to come, for anyone to go out of our kingdom and return safe and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned.

43. If any man hold of any escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, and perform no other service to us, than he would to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it.

44. Those men who dwelt without the forest, from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded or are pledges for any that are attached for something concerning the forest.

45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

46. All barons who have founded abbeys and have the kings of England's charters of advowson, or the ancient tenure thereof, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time, shall forthwith be disforested; and the same shall be done with the banks that have been fenced in by us in our time.

48. All evil customs concerning forests, warrens, foresters and warreners, sheriffs, and their officers, rivers and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same shire, chosen by creditable persons of the same county; and within forty days after the said inquest, be utterly abolished, so as never to be restored; so as we are first acquainted therewith, or our justiciary, if we should not be in England.

49. We will immediately give up all hostages and writings delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from our bailiwicks the relations of Gerard de Atheyes, so that for the future they shall have no bailiwicks in England; we will also remove Engelard de Cygony, Andrew, Peter, and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn and his brothers; Philip Mark, and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, cross-bowmen, and stipendiaries, who are come with horses and arms to the prejudice of our people.

52. If anyone has been dispossessed or deprived by us without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry our father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order, before we undertook the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

53. The same respite we shall have (and in the same manner about administering justice, disafforesting the forests or letting them continue) for disafforesting the forests which Henry our father, and our brother Richard have afforested; and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right: and when we return from our pilgrimage, or if we tarry at home, and do not make our pilgrimage, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the

peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh, of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the marche by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law in Wales, for tenements of the marche according to the law of the marche; the same shall the Welsh do to us and our subjects.

57. As for all those things of which a Welshman hath, without the legal judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order, before we undertook the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellyn, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his rights and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us towards our people of our kingdom, as well clergy as laity shall observe, as far as they are concerned towards their dependents.

61. And whereas, for the honour of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and caused to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstance fail in the performance of them, towards any person, or shall break through any of these articles of peace and security, and the offense be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, (if we should be out of the realm,) the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person,

and the persons of our queen and children; and when it is redressed, they shall obey us as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or cannot come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear, that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will not by ourselves, or by any other, procure anything whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other. And all the ill-will, indignations, and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive: moreover all trespasses occasioned by the said dissensions, from Easter in the fifteenth year of our reign, till the restoration of peace and tranquility, we hereby entirely remit to all, both clegy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed *bona fide* and without evil subtilty.

Given under our hand, in the prescence of the witnesses above named, and many others, in the meadow called Runnymede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

THE DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.*

The Unanimous Declaration of the Thirteen United States of America:

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are Life, Liberty, and the pursuit of Happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; That, whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute a new Government laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government and to provide new Guards for their future security.

Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world:

He has refused his Assent to Laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operations till his Assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise, the State remaining in the meantime exposed to all the dangers of invasion from without and convulsions within.

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*The text here followed is that of U. S. Rev. Stat. (2 ed. 1878) p. 3.

He has endeavored to prevent the population of these states, for that purpose obstructing the Laws for the Naturalization of Foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People and eat out their substance.

He has kept among us in times of peace, Standing Armies, without the Consent of our Legislatures.

He has affected to render the Military independent of, and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws, giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering, fundamentally, the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun, with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow citizens, taken Captive on the high Seas, to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian Savages, whose known rules of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them, from time to time, of attempts made by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace, Friends.

We, therefore, the Representatives of the UNITED STATES OF AMERICA IN GENERAL CONGRESS Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good People of these Colonies, solemnly publish and declare, that these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with firm reliance on the Protection of DIVINE PROVIDENCE we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

JOHN HANCOCK.

New Hampshire.

JOSIAH BARTLETT,
WM. WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay.

SAML. ADAMS,
JOHN ADAMS,
ROBT. TREAT PAINE,
ELBRIDGE GERRY.

Rhode Island.

STEP. HOPKINS,
WILLIAM ELLERY.

Connecticut.

ROGER SHERMAN,
SAM'EL HUNTINGTON,
WM. WILLIAMS,
OLIVER WOLCOTT.

New York.

WM. FLOYD,
PHIL. LIVINGSTON,
FRANS. LEWIS,
LEWIS MORRIS.

New Jersey.

RICHD. STOCKTON,
JNO. WITHERSPOON,
FRAS. HOPKINSON,
JOHN HART,
ABRA. CLARK.

Pennsylvania.

ROBT. MORRIS,
BENJAMIN RUSH,
BENJA. FRANKLIN,
JOHN MORTON,
GEO. CLYMER,
JAS. SMITH,
GEO. TAYLOR,
JAMES WILSON,
GEO. ROSS.

Delaware.

CÆSAR RODNEY,
GEO. READ,
THO. M'KEAN.

Maryland.

SAMUEL CHASE,
WM. PACA,
THOS. STONE,
CHARLES CARROLL, of Carrollton.

Virginia.

GEORGE WYTHE,
RICHARD HENRY LEE,
THO. JEFFERSON,
BENJ. HARRISON,
THOS. NELSON, Jr.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina.

WM. HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina.

EDWARD RUTLEDGE,
THOS. HEYWARD, Junr.,
THOMAS LYNCH, Junr.,
ARTHUR MIDDLETON.

Georgia.

BUTTON GWINNETT,
LYMAN HALL,
GEO. WALTON.

ARTICLES OF CONFEDERATION,[*]

ADOPTED BY DELEGATES IN CONGRESS AT PHILADELPHIA JULY 9, 1778.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting:

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-Bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz:

"*Articles of Confederation and perpetual Union between the States of Newhampshire,* "*Massachusetts-Bay, Rhodeisland and Providence Plantations, Connecticut, New York,* "*New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Caro-*" *lina, and Georgia.*"

Article I. The stile of this confederacy shall be, "The United States of America."

Article II. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively: provided, That such restriction shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant: provided, also, That no impositions, duties or restriction shall be laid by any State on the property of the United States, or either of them.

If any person, guilty of or charged with treason, felony, or other high misdemeanor, in any state shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or Executive power of the State from which he fled, be delivered up, and removed to the State having jurisdiction of his offense. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

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[*] Text here followed is that of U. S. Rev. Stat. (2 ed. 1878), p. 7.

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday of November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congres by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind. Each State shall maintain its own delegates in a meeting of the States. and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive an embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defense of such state or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide, and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled; and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled; unless such States be infested by pirates; in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct; and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII. All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time, direct and appoint.

The taxes for paying that proportion, shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ARTICLE IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving embassadors—entering into treaties and alliances: provided, That no treaty of commerce shall be made, whereby the legislative power of the respective States, shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever —of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: provided, That no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear, and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive. And if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall, nevertheless, proceed to pronounce sentence or judgment, which shall, in like manner, be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned: provided, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward:" provided, also, That no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more States, whose jurisdiction, as they may respect such lands and the States which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States. The United States in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade, and managing all affairs with the Indians, not members of any of the states: provided, that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another thoughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated, "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside: provided, That no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and cloath, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so cloathed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other State, should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared; and the officers and men, so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time, think expedient to vest them with: provided, That no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And, whereas, it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual Union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which, by the said confederation, are submitted to them: and that the articles thereof shall be inviolably observed by the States we re[s]pectively represent; and that the Union shall be perpetual.

In witness whereof, We have hereunto set our hands, in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord one thousand, seven hundred and seventy-eight and in the third year of the Independence of America.

On the part & behalf of the State of New Hampshire.—Josiah Bartlett, John Wentworth, Junr. (August 8, 1778.)

On the part and behalf of the State of Massachusetts Bay.—John Hancock, Samuel Adams, Eldbridge Gerry, Francis Dana, James Lovell, Samuel Holton.

On the part and behalf of the State of Rhode Island and Providence Plantations.—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the State of Connecticut.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

On the part and behalf of the State of New York.—Jas. Duane, Fran. Lewis, Wm. Duer, Gouv. Morris.

On the part and behalf of the State of New Jersey.—Jno. Witherspoon, Nathl. Scudder. (Nov. 26, 1778.)

On the part and behalf of the State of Pennsylvania.—Robt. Morris, Daniel Roberdeau, Jona Bayard Smith, William Clingan, Joseph Reed. (22d July, 1778.)

On the part & behalf of the State of Delaware.—Tho M'Kean (Feby. 12, 1779), John Dickinson (May 5th, 1779), Nicholas Van Dyke.

On the part and behalf of the State of Maryland.—John Hanson (March 1, 1781), Daniel Carroll. (Mar 1, 1781.)

On the part and behalf of the State of Virginia.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the State of No. Carolina.—John Penn (July 21st, 1778), Corns. Harnett, Jno. Williams.

On the part & behalf of the State of South Carolina.—Henry Laurens, William Henry Drayton, Jno. Matthews, Richd. Hutson, Thos. Heyward, Junr.

On the part & behalf of the State of Georgia.—Jno. Walton (24th July, 1778), Edwd. Telfair, Edwd. Langworthy.

CONSTITUTION OF THE UNITED STATES.[*]

ADOPTED BY THE CONVENTION, SEPT. 17, 1787.

We, THE PEOPLE of the United States, in Order to form a more perfect Union establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION 1. All **legislative powers** herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. 1. The **House** of Representatives shall be composed of **members** chosen every second Year, by the People of the several States; and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

2. [**Eligibility.**]—No Person shall be a Representative who shall not have attained the Age of twenty-five Years, and been seven Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

3. **Representatives** and direct Taxes shall be **apportioned** among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.[†] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When **vacancies** happen in the Representation from any State the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

5. The House of Representatives shall chuse their **speaker** and other Officers, and shall have the sole **Power of Impeachment.**

SECTION 3. 1. The **senate** of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

2. Immediately after they shall be assembled, in Consequence of the first Election, they shall be divided, as equally as may be, into three **classes.** The Seats of

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[*] Text here followed is that of U. S. Rev. Stat. (2 ed 1878), p. 17.

All before † changed by 14 amendment, §2.

the Senators of the first Class, shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if **vacancies** happen by Resignation or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

3. [**Qualification.**]—No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

4. The **Vice-president** of the United States shall be President of the Senate; but shall have no Vote unless they be equally divided.

5. The Senate shall chuse their **other Officers,** and also a President, *pro tempore*, in the Absence of the Vice-president, or when he shall exercise the Office of President of the United States.

6. The Senate shall have sole Power to try all **Impeachments.** When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without the Concurrence of two-thirds of the Members present.

7. **Judgment,** in Cases of Impeachment, shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit, under the United States; but the Party convicted shall nevertheless, be liable and subject to Indictment, trial, judgment and punishment, according to law.

SECTION 4. .1. The Times, Places, and Manner of holding **Elections** for Senators and Representatives. shall be prescribed in each State, by the Legislature thereof; but the Congress may, at any time, by Law, make or alter such Regulations, except as to the Places of chusing Senators.

2. The Congress shall assemble at least once in every Year and such **meeting** shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. 1. [**Prerogatives—Quorum.**]—Each House shall be the Judge of the Elections, Returns and Qualification of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

2. Each House may determine the **rules** of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.

3. Each House shall keep a **journal** of its Proceedings, and from time to time publish the same, excepting such Parts as may, in their Judgment, require Secrecy; and the Yeas and Nays of the Members of either House, on any question, shall, at the Desire of one-fifth of those present, be entered on the Journal.

4. Neither House, during the session of Congress, shall, without the Consent of the other, **adjourn** for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION 6. 1. The Senators and Representatives shall receive a **compensation** for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall, in all Cases, except Treason, Felony and Breach of the Peace, be **privileged** from Arrest, during their Attendance at the Session of their respective Houses, and in going to or returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

2. [**Exclusion from other office.**]—No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office, under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased, during such time; and no Person holding any Office under the United States shall be a Member of either House, during his Continuance in Office.

SECTION 7. 1. All **Bills** for raising **Revenue** shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills.

2. [**Bills—Approval—Veto.**]—Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States: If he approve, he shall sign it; but if not, he shall return it, with his Objections, to that House in which it shall have originated, who shall enter the Objections, at large, on their Journal, and proceed to reconsider it. If, after such Reconsideration, two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But, in all such Cases, the Votes of both Houses shall be determined by Yeas and Nays; and the Names of the Persons voting for and against the Bill, shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days, (Sundays excepted), after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress, by their Adjournment, prevents its return; in which case it shall not be a Law.

3. Every **Order, Resolution** or **Vote,** to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment), shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION 8. The **Congress** shall have **Power**—

1. To lay and collect Taxes, Duties, Imposts and Excises; to pay the Debts, and to provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises, shall be uniform throughout the United States;

2. To borrow Money on the credit of the United States;

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes;

4. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

6. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

7. To establish Post Offices and post Roads;

8. To promote the Progress of Science and useful Arts, by securing, for limited Times, to Authors and Inventors, the exclusive Right to their respective Writings and Discoveries;

9. To constitute Tribunals inferior to the supreme Court;

10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

11. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

12. To raise and support Armies; but no Appropriation of money to that Use shall be for a longer Term than two Years;

13. To provide and maintain a Navy;

14. To make Rules for the Government and Regulation of the land and naval Forces;

15. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

16. To provide for organizing, arming and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States re-

serving to the States respectively the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

17. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square), as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased, by the Consent of the Legislature of the State in which the Same shall be for the Erections of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; and

18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION 9. 1. [**Slave Trade.**]—The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for such Person.

2. The Privilege of the Writ of **Habeas Corpus** shall not be suspended, unless when in Cases of Rebellion or Invasion, the public Safety may require it.

3. No Bill of **Attainder** or *ex-post facto* Law shall be passed.

4. No Capitation or other **direct tax** shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.

5. [**Export tax.**]—No Tax or Duty shall be laid on Articles exported from any State.

6. No **Preference** shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to or from one State be obliged to enter, clear, or pay Duties in another.

7. [**Appropriations—Accounts.**]—No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

8. [**Titles—Gifts.**]—No Title of Nobility shall be granted by the United States; and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept any present, Emolument, Office or Title of any kind whatever, from any King, Prince or foreign State.

SECTION 10. **No state shall** enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit bills of Credit; make anything but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, *ex-post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

2. **No State shall,** without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States, and all such Laws shall be subject to the Revision and Control of the Congress.

3. **No State shall,** without the Consent of Congress, lay any Duty of Tonnage, keep Troops or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

SECTION 1. 1. **The executive Power** shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years and together with the Vice-president, chosen for the same Term, be elected as follows:

2. Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of **Electors,** equal to the whole Number of Senators and Representatives

to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

3. **The electors shall meet** in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates and the Votes shall then be Counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors Appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse, by Ballot, one of them for President; and if no Person have a Majority, then from the five highest on the List, the said House shall in like Manner, chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a quorum for this Purpose shall Consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors, shall be the Vice-president. But if there should remain two or more who have equal Votes, the Senate shall chuse from them, by Ballot, the Vice-president. [Superseded by 12th amendment, p. 26.]

4. The Congress may determine the **Time of chusing** the Electors, and the Day on which they shall give their Votes, which Day shall be the same throughout the United States.

5. [**President—Eligibility.**]—No Person except a natural born Citizen, or a Citizen of the United States at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

6. [**Succession.**]—In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to Discharge the Powers and Duties of the said Office, the same shall devolve on the Vice-president, and the Congress may, by Law, provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice-president, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

7. The President shall, at stated Times, receive for his Services a **Compensation,** which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive during that Period any other emolument from the United States, or any of them.

8. Before he enters on the Execution of his Office, he shall take the following **Oath** or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will, to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. 1. [**Powers.**]—The President shall be Commander-in-chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual Service of the United States. He may require the Opinion in writing of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices; and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

2. [**Same.**]—He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present Concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: But the Congress may, by Law, vest the Appointment of such inferior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

3. [**Same.**]—The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions, which shall expire at the End of their next Session.

SECTION 3. 1. [**Duties.**]—He shall from time to time, give to the Congress Information of the state of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient. He may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper. He shall receive Ambassadors and other public Ministers. He shall take Care that the Laws be faithfully executed; and shall Commission all the Officers of the United States.

SECTION 4. 1. [**Removal.**]—The President, Vice-president, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

SECTION 1. 1. **The judicial Power** of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish.

The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior; and shall, at stated Times, receive for their Services a Compensation, which shall not be Diminished during their continuance in Office.

SECTION 2. 1. The judicial **Power shall extend** to all Cases in Law and Equity arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, or other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State, claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.

2. In all Cases affecting Ambassadors, other public Ministers or Consuls, and those in which a State shall be a Party, the **supreme Court** shall have original **Jurisdiction**. In all the other Cases, before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3. The **Trial of all Crimes**, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been Committed; but when not Committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. 1. **Treason** against the United States shall consist only in levying War against them, or in adhering to their Enemies; giving them Aid and Comfort. No Person shall be convicted of Treason, unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

2. The Congress shall have Power to declare the **Punishment** of Treason; but no Attainder of Treason shall work Corruption of Blood or Forfeiture, except during the Life of the Person attainted.

ARTICLE IV.

SECTION 1. 1. **Full Faith** and **Credit** shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may, by general Laws, prescribe the Manner in which such Acts, Records and Proceedings shall be Proved, and the Effect thereof.

SECTION 2. 1. The **citizens** of each State shall be entitled to all **Privileges** and Immunities of Citizens in the several States

2. [**Extradition.**]—A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall, on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

3. [**Fugitive Slaves.**]—No Person held to Service or Labour in one State, under the Laws thereof escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour; but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION 3. 1. **New States** may be admitted by the Congress into this Union, but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned, as well as of the Congress.

2. [**Territories.**]—The Congress shall have Power to dispose of, and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. 1. The United States shall **guarantee** to every State in this Union a **Republican** Form of **Government,** and shall protect each of them against Invasion; and on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic Violence.

ARTICLE V.

SECTION 1. 1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose **Amendments** to this Constitution; or on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided, that no Amendment, which may be made prior to the Year One thousand eight hundred and eight, shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be Deprived of its equal Suffrage in the Senate.

ARTICLE VI.

SECTION 1. 1. [**Prior debts.**]—All Debts contracted, and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation.

2. This **Constitution,** and the Laws of the United States which shall be made in pursuance Thereof, and all Treaties made, or which shall be made under the Authority of the United States, shall be the **supreme Law** of the Land, and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary, notwithstanding.

3. The Senators and Representatives, before mentioned, and the Members of the several State Legislatures, and all executive and judicial **Officers,** both of the United States and of the several States, shall be bound by **Oath** or affirmation, to support this Constitution; but **no religious Test** shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

SECTION 1. The **Ratification** of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present, the Seventeenth Day of September, in the Year of our Lord one thousand seven hundred and Eighty-seven, and of the Independence of the United States of America the Twelfth.

In Witness whereof, We have hereunto subscribed our Names.

GO. WASHINGTON,
Presidt and Deputy from Virginia.

New Hampshire.
JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts.
NATHANIEL GORMAN,
RUFUS KING.

Connecticut.
WM. SAML. JOHNSON,
ROGER SHERMAN.

New York.
ALEXANDER HAMILTON.

New Jersey.
WIL: LIVINGSTON,
DAVID BREARLEY,
WM. PATERSON,
JONA DAYTON.

Pennsylvania.
B: FRANKLIN,
THOMAS MIFFLIN,
ROBT MORRIS,
GEO. CLYMER,
THOS. FITZIMMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUV. MORRIS.

Delaware.
GEO: READ,
GUNNING BEDFORD, JRN.,
JOHN DICKINSON,
RICHARD BASSETT,
JACO: BROOM.

Maryland.
JAMES McHENRY,
DAN OF ST. THOS. JENIFER,
DANIL CARROLL.

Virginia.
JOHN BLAIR.
JAMES MADISON. JR.

North Carolina.
WM BLOUNT,
RICHD DOBBS SPAIGHT,
HU WILLIAMSON.

South Carolina.
J RUTLEDGE,
CHARLES COTESWORTH PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia.
WILLIAM FEW,
ABR BALDWIN.

ATTEST: **WILLIAM JACKSON, Secretary.**

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of **religion,** or prohibiting the free exercise thereof; or abridging the freedom of **speech,** or of the **press**; or the right of the people peaceably to assemble, and to **petition** the Government for a redress of grievances.

ARTICLE II.

A well regulated Militia being necessary to the security of a free State, the right of the people to **keep** and **bear arms** shall not be infringed.

ARTICLE III.

No Soldier shall, in time of peace, be **quartered** in any house without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against **unreasonable searches** and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

[Rights—Person—Property.]—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in a case arising in the land or naval forces, or in the Militia, when in actual service, in time of War or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled, in any Criminal Case, to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the **accused** shall enjoy the **right** to a speedy and public trial, by an impartial **jury** of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be **confronted with the witnesses** against him; to have compulsory process, for obtaining Witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of **trial by jury** shall be **preserved**, and no fact, tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain **rights,** shall not be construed to deny or disparage others **retained** by the people.

ARTICLE X.

The **powers** not delegated to the United States by the Constitution, nor prohibited by it to the states, are **reserved** to the states, respectively, or to the people.

ARTICLE XI.

[Restrictions.]—The **judicial power** of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.

[President—Vice-president—Election.]—The Electors shall meet in their respective states and vote by ballot, for President and Vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballot the person voted for as President, and in distinct ballots the person voted for as Vice-president; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person has such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-president shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-president, shall be the Vice-president, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-president of the United States.

ARTICLE XIII.

1. Neither **slavery** nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. **[Citizens—Who are—Rights.]**—All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the **right** to **vote** at any election for the choice of electors for President and Vice-president of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislatures thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way **abridged,** except for participation in rebellion, or other crime, the basis of **representation** therein shall be **reduced** in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SEC. 3. **[Office—Disability.]**—No person shall be a Senator or Representative in Congress, or elector of President and Vice-president, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

SEC. 4. **[Confederate claims.]**—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation the provisions of this article.

ARTICLE XV.

SECTION 1. The **right** of citizens of the United States **to vote** shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

TREATY*

Between the United States of America and the French Republic.

The President of the United States of America and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemaire, an. 9, (30 September, 1800), relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectfully named their plenipotentiaries, to-wit: the president of the United States [of America,] by and with the advice and consent of the Senate of the said states. Robert R. Livingston, minister plenipotentiary of the United States, and James Monroe, minister plenipotentiary and envoy extraordinary of the said states, near the government of the French Republic; and the First Consul, in the name of the French people, Francis citizen Barbé Marbois, minister of the public treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ARTICLE I. *Whereas*, By the article the third of the treaty concluded at St. Ildefonso, the 9th Vendemaire, an. 9, (1st October, 1800,) between the First Consul of the French Republic and his Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages on his part to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness, the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States;" and

Whereas, In pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory; the First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever, and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned treaty, concluded with his Catholic Majesty.

ART. II. In the cession made by the preceding article, are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands and all public buildings, fortifications, barracks and other edifices, which are not private property.—The archives, papers and documents relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

ART. III. The Inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess,

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*The text here followed is that of U. S. Stat. at Large, Vol. 8, p. 200.

Art. IV. There shall be sent, by the government of France, a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of his Catholic Majesty the said country and its dependencies in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

Art. V. Immediately after the ratification of the present treaty by the president of the United States, and in case, that of the first consul shall have been previously obtained, the commissary of the French Republic shall remit all the military posts of New Orleans and other parts of the ceded territory, to the commissary or commissaries named by the president to take possession; the troops whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

Art. VI. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

Art. VII. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations, for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships, coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies, and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted, during the space of twelve years, in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States, coming directly from France or Spain or any of their colonies, without being subject to any other or greater duty on merchandize, or other or greater tonnage than those paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory; the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandize of the United States, or any right they may have to make such regulations.

Art. VIII. In future, and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.

Art. IX. The particular convention signed this day by the respective ministers, having for its objects to provide for the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th of September, 1800, (8th Ven demaire, an. 9,) is approved, and to have its execution in the same manner as if it had been inserted in this present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention, signed at the same date as the present treaty, relative to a definite rule between the contracting parties, is in like manner approved, and will be ratified in the same form and in the same time, and jointly.

Art. X. The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the ministers plenipotentiary, or sooner if possible. In faith whereof, the respective plenipotentiaries have signed these articles in the French and English languages, declaring nevertheless that the present treaty was originally agreed to in the French language; and have thereunto affixed their seals.

Done at Paris, the tenth day of Floreal, in the eleventh year of the French Republic, and the 30th April, 1803.

[Signed.]

ROBERT R. LIVINGSTON, [L. S.]
JAMES MONROE, [L. S.]
F. BARBE MARBOIS. [L. S.]

ORGANIC ACT.

AN ACT TO ORGANIZE THE TERRITORIES OF NEBRASKA AND KANSAS.

Be it Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to-wit: beginning at a point in the Missouri river, where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri river; thence down the main channel of said river to the place of beginning, be, and the same is, hereby created into a temporary government, by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory, which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent to the government to make if this act had never passed.

SEC. 2. *And be it further enacted,* That the executive power and authority, in and over said Territory of Nebraska, shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within said territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offenses against the laws of said Territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted,* That there shall be a secretary of the said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate, and to the speaker of the house of representatives, to be deposited in the libraries of congress; and in case of the death, removal, resignation or absence of the governor from the territory, the secretary shall be, and he is hereby authorized and required to execute and perform all the powers and duties of the Governor, during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of Twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the Territory, representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county or counties, for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory, to be taken by such persons and in such mode as the Governor shall designate and appoint; and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such a manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said Territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly; *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: *And provided further*, That no officer, soldier, seaman or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said Territory, by reason of being on service therein.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory, shall, before it becomes a law, be presented to the governor of the Territory; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Nebraska. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and in the first instance the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly; and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or hold any office under the government of said Territory.

SEC. 9. *And be it further enacted*, That the judicial power of said Territory shall be invested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court, shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said Supreme Court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error, or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decision of the said Supreme Court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of *habeas corpus*, involving the question of personal freedom: *Provided*, That nothing herein contained shall be construed to apply to or affect the provisions to the "act respecting fugitives from justice, and persons escaping from the service of their masters," approved, February twelfth, seventeen hundred and ninety-three, and the "act to amend and supplementary to the aforesaid act," approved, September eighteen. eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and Laws of the United States as is vested in the circuit and district courts of the United States and the said Supreme and District Courts of the said Territory, and the respective judges thereof, shall and may grant writs of *habeas corpus* in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Utah Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That the provisions of an act entitled "an act respecting fugitives from justice, and persons escaping from the service of their masters," approved, February twelve, seventeen hundred and ninety-three, and the provisions of the act entitled "an act to amend, and supplementary to the aforesaid act," approved, September eighteen, eighteen hundred and fifty, be and the same are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska.

SEC. 11. *And be it further enacted*, That there shall be appointed an Attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified unless sooner removed by the president, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 12. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid, shall before they act as such, respectively take an oath or affirmation before the District Judge, or some Justice of the Peace in the limits of said Territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary, among the executive proceedings; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars. The Chief Justice and Associate Justices shall each receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Atsembly shall be entitled to three dollars each, per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route, and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, and assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers, three dollars per day during the session of the Legislative Assembly; but no other officer shall be paid by the United States: *Provided*, That there shall be but one session of the Legislature annually, unless on an extraordinary occasion, the Governor shall think proper to call the legislature together. There shall be appropriated, annually, the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the Executive Department; and there shall also be appropriated annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of laws, and other incidental expenses; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury of the United States, and shall, semi-annually, account to the said Secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditures shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 13. *And be it further enacted*, That the Legislative Assembly of the Territory of Nebraska, shall hold its first session at such time and place in said Territory as the Governor thereof shall appoint and direct; and at the said first session, or as soon thereafter as they shall deem expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said Governor and Legislative Assembly.

SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections the times, places and manner of holding the elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved, March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void, it being the true intent and meaning of this act not to legislate slavery into any Territory or State nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

SEC. 15. *And be it further enacted*, That there shall hereafter be appropriated, as has been customary for the Territorial governments, a sufficient amount, to be expended under the direction of the said Governor of the Territory of Nebraska, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations as shall be prescribed by law.

SEC. 16. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections number sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 17. *And be it further enacted*, That until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such Judicial Districts; and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 18. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the senate, for the Territory of Nebraska, who, by virtue of the provisions of any law now existing, or which may be enacted during the present Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at such time and place, and in such manner as the Secretary of the Treasury may prescribe. * * * * *

Approved May 30, 1854.

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*The remainder of this act refers to Kansas.

ENABLING ACT.

An act to enable the people of Nebraska to form a Constitution and State Government, and for the Admission of such State into the Union on an equal footing with the original States.

[Passed April 19, 1864, U. S. Stat. at Large, Vol. 13, p. 47.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of that portion of the territory of Nebraska included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves a constitution and state government, with the name aforesaid, which state, when so formed, shall be admitted into the Union as hereinafter provided.

SEC. 2. *And be it further enacted,* That the said state of Nebraska shall consist of all the territory included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the western boundary of the state of Missouri with the fortieth degree of north latitude; extending thence due west along said fortieth degree of north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree of north latitude to the Keya Paha river; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara river; thence down the middle of the channel of said Niobrara river, and following the meanderings thereof, to its junction with the Missouri river; thence down the middle of the channel of said Missouri river, and following the meanderings thereof, to the place of beginning.

Change in channel of Missouri river does not change state boundaries. 4, 438.

SEC. 3. *And be it further enacted,* That all persons qualified by law to vote for representatives to the general assembly of said territory shall be qualified to be elected; and they are hereby authorized to vote for and choose representatives to form a convention, under such rules and regulations as the governor of said territory may prescribe, and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and if any of said citizens are enlisted in the army of the United States, and are still within said territory, they shall be permitted to vote at their place of rendezvous; and if any are absent from said territory, by reason of their enlistment in the army of the United States, they shall be permitted to vote at their place of service, under the rules and regulations in each case to be prescribed as aforesaid; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the population as near as may be, and said apportionment shall be made for said territory by the governor, United States district attorney, and chief justice thereof, or any two of them. And the governor of said territory shall, by proclamation, on or before the first Monday of May next, order an election of the representatives aforesaid to be held on the first Monday in June thereafter throughout the territory; and such election shall be conducted in the same manner as is prescribed by the laws of said territory regulating elections therein for members of the house of representatives; and the number of members to said convention shall be the same as now constitute both branches of the legislature of the aforesaid territory.

Sec. 4. *And be it further enacted,* That the members of the convention thus elected shall meet at the capital of said territory on the first Monday in July next, and after organization shall declare, on behalf of the people of said territory, that they adopt the constitution of the United States; whereupon the said convention shall be, and it is hereby, authorized to form a constitution and state government: *Provided,* That the constitution when formed shall be republican, and not repugnant to the constitution of the United States and the principles of the Declaration of Independence; *And provided further,* That said constitution shall provide, by an article forever irrevocable, without the consent of the congress of the United States:

First. That slavery or involuntary servitude shall be forever prohibited in said state.

Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship.

Third. That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States. and that the lands belonging to citizens of the United States residing without the said state shall never be taxed higher than the land belonging to residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to or which may hereafter be purchased by the United States.

Sec. 5. *And be it further enacted,* That in case a constitution and state government shall be formed for the people of said territory of Nebraska, in compliance with the provisions of this act, that said convention forming the same shall provide by ordinance for submitting said constitution to the people of said state for their ratification or rejection at an election to be held on the second Tuesday of October, one thousand eight hundred and sixty-four, at such places and under such regulations as may be prescribed therein, at which election the qualified voters, as hereinbefore provided, shall vote directly for or against the proposed constitution, and the returns of said elections shall be made to the acting governor of the territory, who, together with the United States district attorney and chief justice of the said territory, or any two of them, shall canvass the same, and if a majority of the legal votes shall be cast for said constitution in said proposed state, the said acting governor shall certify the same to the president of the United States, together with a copy of the said constitution and ordinances; whereupon it shall be the duty of the president of the United States to issue his proclamation declaring the state admitted into the Union on an equal footing with the original states, without any further action whatever on the part of congress.

Sec. 6. *And be it further enacted,* That until the next general census shall be taken, said state of Nebraska shall be entitled to one representative in the house of representatives of the United States, which representative, together with the governor and state and other officers provided for in said constitution, may be elected on the same day a vote is taken for or against the proposed constitution and state government.

Sec. 7. *And be it further enacted,* That sections number sixteen and thirty-six in every township, and when such sections have been sold or otherwise disposed of by any act of congress, other lands, equivalent thereto, in legal subdivisions of not less than one quarter-section, and as contiguous as may be, shall be, and are hereby, granted to said state for the support of common schools.

Sec. 8. *And be it further enacted,* That provided the state of Nebraska shall be admitted into the Union in accordance with the foregoing provisions of this act, that twenty entire sections of the unappropriated public lands within said state, to be selected and located by direction of the legislature thereof, on or before the first day of

January, Anno Domini eighteen hundred and sixty-eight, shall be and they are hereby granted, in legal subdivisions of not less than one hundred and sixty acres, to said state, for the purpose of erecting public buildings at the capital of said state for legislative and judicial purposes, in such manner as the legislature shall prescribe.

SEC. 9. *And be it further enacted,* That fifty other entire sections of land, as aforesaid, to be selected and located as aforesaid, in legal subdivisions as aforesaid, shall be, and they are hereby, granted to said state for the purpose of erecting a suitable building for a penitentiary or state prison in the manner aforesaid.

SEC. 10. *And be it further enacted,* That seventy-two other sections of land shall be set apart and reserved for the use and support of a state university, to be selected in manner as aforesaid, and to be appropriated and applied as the legislature of said state may prescribe for the purpose named, and for no other purpose.

SEC. 11. *And be it further enacted,* That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said state for its use, the said land to be selected by the governor thereof, within one year after the admission of the state, and when so selected to be used or disposed of on such terms, conditions and regulations as the legislature shall direct: *Provided,* That no salt spring or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this act, be granted to said state.

SEC. 12. *And be it further enacted,* That five per centum of the proceeds of the sales of all public lands lying within said state, which have been or shall be sold by the United States prior or subsequent to the admission of said state into the Union, after deducting all expenses incident to the same, shall be paid to the said state for the support of the common schools.

SEC. 13. *And be it further enacted,* That from and after the admission of said state of Nebraska into the Union in pursuance of this act, the laws of the United States, not locally inapplicable, shall have the same force and effect within the said state as elsewhere within the United States; and said state shall constitute one judicial district, and be called the district of Nebraska.

SEC. 14. *And be it further enacted,* That any unexpended balance of the appropriations for said territorial legislative expenses of Nebraska remaining for the fiscal years eighteen hundred and sixty-three and eighteen hundred and sixty-four, or so much thereof as may be necessary, shall be applied to and used for defraying the expenses of said convention and for the payment of the members thereof, under the same rules, regulations, and rates as are now provided by law for the payment of the territorial legislature.

Approved, April 19, 1864.

ADMISSION.

Whereas, The congress of the United States did, on the ninth day of February, A.D. 1867, pass an act, in the following words, to-wit:

"An act for the admission of the state of Nebraska into the Union."

Whereas, On the twenty-first day of March A.D. 1864, congress passed an act to enable the people of Nebraska to form a constitution and State government, and offered to admit said State, when so formed, into the Union, upon compliance with certain conditions therein specified; and, whereas, it appears that the said people have adopted a constitution, which, upon due examination, is found to conform to the provisions, and comply with the conditions of said act, and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled, That the constitution and State government which the people of Nebraska have formed for themselves be, and the same is hereby, accepted, ratified and confirmed, and that the said State of Nebraska shall be, and is hereby, declared to be one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted,* That the said state of Nebraska, shall be, and is hereby, declared to be entitled to all the rights, privileges. grants, and immunities, and to be subject to all the conditions and restrictions of an act entitled "An act to enable the people of Nebraska to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States." Approved April 19th, 1864.

SEC. 3. *And be it further enacted,* That this act shall not take effect except upon the fundamental condition, that within the State of Nebraska, there shall be no denial of the elective franchise, or of any other right, to any person, by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition, that the legislature of said State, by a solemn public act, shall declare the assent of said State to the said fundamental condition, and shall transmit to the President of the United States an authentic copy of said act; upon receipt whereof the President, by proclamation shall forthwith announce the fact, whereupon, said fundamental condition shall be held as a part of the organic law of the State, and thereupon, and without any further proceedings on the part of Congress, the admission of said State into the Union shall be considered as complete. Said State legislature shall be convened by the territorial governor, within thirty days after the passage of this act, to act upon the conditions submitted herein.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LAFAYETTE S. FOSTER,
President of the Senate, pro tem.

In the Senate of the United States, February 8, 1867. The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act for the admission of the State of Nebraska into the Union," with his objections thereto, the Senate proceeded in pursuance of the Constitution to reconsider the same; and

Resolved, That the said bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest:

J. W. FORNEY,
Secretary of the Senate.
By W. J. McDONALD,
Chief Clerk.

In the House of Representatives of the United States, February 9, 1867.

The House of Representatives having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act for the admission of the State of Nebraska into the Union," returned to the Senate by the President of the United States, with his objections, and sent by the Senate to the House of Representatives with the message of the President returning the bill:

Resolved, That the bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest: EDWD. W. McPHERSON,
Clerk.

A true copy.
R. S. CHEW,
Chief Clerk.

DEPARTMENT OF STATE,
WASHINGTON, Feb. 12, 1867.

And Whereas, The governor of the territory of Nebraska, did on the 14th day of February, A.D. 1867, make and issue the following proclamation, to-wit: Whereas, the congress of the United States has passed an act admitting, conditionally, Nebraska into the Union, as one of the independent states of the same, and whereas, said condition is in the words following:

And be it further enacted, That this act shall not take effect except upon the fundamental condition, that within said state of Nebraska, there shall be no abridgment or denial of the exercise of the elective franchise, or of any other right to any person by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition, that the legislature of said state, by a solemn public act, shall declare the assent of said state to said fundamental condition, and shall transmit to the president of the United States an authentic copy of said act upon receipt whereof, the president, by proclamation, shall forthwith announce the fact, whereupon said fundamental condition shall be held as a part of the organic law of said state, and thereupon, and without any further proceedings on the part of congress, the admission of said state into the Union shall be considered as complete.

Now, therefore, I, Alvin Saunders, governor of the territory of Nebraska, do call upon the members of the state legislature of Nebraska, to meet at the capitol, in the city of Omaha, on Wednesday, the twentieth day of February, inst., at the hour of two o'clock P.M., for the purpose of taking action upon the conditions as proposed by congress.

In testimony whereof, I have hereunto set my hand and have caused to be affixed the great seal of the territory of Nebraska.

Done at Omaha, this 14th day of February, A.D. 1867.

[L. S.]
By the governor ALVIN SAUNDERS.
ALGERNON S. PADDOCK, Secretary.

A PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

MARCH 1ST, 1867.

Whereas, The Congress of the United States, did, by an act, approved on the nineteenth day of April, 1864, authorize the people of the Territory of Nebraska to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, upon certain conditions in said act specified: and whereas, said people did adopt a constitution conforming to the provisions and conditions of said act and ask admission into the Union; and whereas, the Congress of the United States did on the eighth and ninth days of February, 1867, in mode prescribed by the constitution, pass a further act for the admission of the State of Nebraska into the Union, in which last named act it was provided that it should not take effect except upon the fundamental condition that within the State of Nebraska there should be no denial of the elective franchise, or of any other right to any person by reason of race or color, excepting Indians not taxed, and upon the further fundamental condition, that the legislature of said State, by a solemn public act, should declare the assent of said State to the said fundamental condition, and should transmit to the President of the United States an authenticated copy of said act of the legislature of said State, upon receipt whereof, the President, by proclamation, should forthwith announce the fact, whereupon the said fundamental condition should be held as a part of the organic law of the State; and thereupon, and without any further proceedings on the part of Congress, the admission of said State into the Union should be considered as complete; and whereas, within the time prescribed by said act of Congress of the eighth and ninth of February, 1867, the legislature of the State of Nebraska did pass an act ratifying the said act of Congress of the eighth and ninth of February, 1867, and declaring that the aforenamed provisions of the third section of said last named act of Congress should be a part of the organic law of the State of Nebraska; and whereas, a duly authenticated copy of said act of the legislature of the State of Nebraska has been received by me:

Now, therefore, I, Andrew Johnson, President of the United States of America, do, in accordance with the provisions of the act of Congress last herein named, declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Nebraska, to entitle that State to admission to the Union, have been ratified and accepted, and that the admission of the said State into the Union is now complete.

In testimony whereof I have hereto set my hand, and have caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of March, in the year of our Lord, 1867, and of the Independence of the United States of America the ninety-first.

[SEAL] By the President:

ANDREW JOHNSON.

WM. H. SEWARD, Secretary of State.

CONSTITUTION

OF THE

STATE OF NEBRASKA.

1866.

PREAMBLE.

We, the people of Nebraska, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility, and promote the general welfare, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are born equally free and independent, and have certain inherent rights; among these are life, liberty, and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

SEC. 2. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

SEC. 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech and of the press. In all criminal prosecutions or indictments for libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 4. The right of the people peaceably to assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

SEC. 5. The right of trial by jury shall remain inviolate, but the legislature may authorize trial by a jury of a less number than twelve men, in inferior courts.

SEC. 6. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 7. In all criminal prosecutions and in cases involving the life or liberty of an individual, the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him; to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and to have the assistance of counsel.

SEC. 8. No person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or in the navy, or the militia, when in actual service in time of war, or public danger; and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require.

SEC. 9. All courts shall be open, and every person, for any injury done him in his land, goods, person or reputation, shall have remedy by due course of law, and justice administered without denial or delay.

SEC. 10. Treason against the state shall consist in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 11. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

SEC. 12. No bill of attainder, *ex-post-facto* law, or any law impairing the obligation of contracts shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 13. The property of no person shall be taken for public use without just compensation therefor.

SEC. 14. No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment, or descent of property.

SEC. 15. No person shall be imprisoned for debt in any civil action on *mesne* or final process, unless in cases of fraud.

SEC. 16. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

SEC. 17. The military shall be in strict subordination to the civil power.

SEC. 18. The writ of error shall be the writ of right in all capital cases, and shall act as a *supersedeas* to stay the execution of the sentence of death until the further order of the supreme court in the premises.

SEC. 19. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers not herein delegated, remain with the people.

ARTICLE II.

LEGISLATIVE.

SECTION 1. The legislative authority of the state shall be vested in a general assembly, which shall consist of a senate and house of representatives, and the style of every law shall be,

"*Be it enacted by the Legislature of the State of Nebraska.*"

SEC. 2. Every male person of the age of twenty-one years, or upwards, belonging to either of the following classes, who shall have resided in the state, county, precinct, and ward, for the time provided by law, shall be an elector:

First—White citizens of the United States.

Second—White persons of foreign birth who shall have declared their intention to become citizens conformable to the laws of the United States on the subject of naturalization.

SEC. 3. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

SEC. 4. Senators and representatives shall be elected biennially, by electors in the respective counties or districts, on the second Tuesday of October. Their term of office shall commence on the first day of January next thereafter, and continue two years, except the senators and representatives to the first legislature under this constitution, whose election and term of office shall be as hereinafter provided.

SEC. 5. The senators and representatives shall be chosen by districts of convenient, contiguous territory, as compact as may be, to be defined by law, except as to the first election which is hereinafter provided for.

SEC. 6. Every white male citizen, who shall be a qualified elector in the district in which he may be chosen to represent, shall be eligible to a seat in the legislature.

SEC. 7. Each house shall be the judge of the election and qualifications of its own members, and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

SEC. 8. The senate shall consist of thirteen members, and the house of representatives shall consist of thirty-nine members, and shall not be increased for the term of ten years after the adoption of this constitution: *Provided*, That after the expiration of the said ten years, the legislature shall have the power to increase the number of senators and representatives, so as to correspond with the increase of the population of the state: *Provided*, Such number shall at no time be more than twenty-five in the senate, and seventy-five in the house of representatives.

SEC. 9. The mode of organizing the house of representatives at the commencement of each regular session shall be prescribed by law.

SEC. 10. Each house shall choose its own officers, may determine its own rule of proceedings, punish its members for disorderly conduct, and with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers necessary to provide for its safety and the undisturbed transaction of its business.

SEC. 11. Each house shall keep a correct journal of its proceedings, which shall be published. At the desire of any three members in the senate, or any five members in the house, the yeas and nays shall be entered upon the journal, and on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed in either house without the concurrence of a majority of all the members elected thereto.

SEC. 12. The first session of the legislature under this constitution shall be held on the fourth day of July, one thousand eight hundred and sixty-six; and all regular sessions thereafter shall commence on the first Thursday after the first Monday in January, biennially. But the legislature may, on extraordinary occasions, be convened by proclamation of the governor, and when so convened, shall transact no business except such as relates to the objects for which they were so convened, to be stated in the proclamation of the governor.

SEC. 13. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased during the term for which he was elected.

SEC. 14. No person being a member of congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature; and if any person shall, after his election as a member of the legislature, be elected to congress, or be appointed to any office, civil or military, under the government of the United States' his acceptance thereof shall vacate his seat.

SEC. 15. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

SEC. 16. Members of the legislature shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subjected to any civil process during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 17. No member of the legislature shall be liable in any civil action or criminal prosecution whatever for words spoken in debate.

SEC. 18. Bills may originate in either house; but may be altered, amended, or rejected in the other.

SEC. 19. Every bill shall be fully and distinctly read on three different days, unless, in case of urgency, three-fourths of the house in which it shall be pending, shall dispense with this rule. No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived or amended, unless the new act contain the entire act revived, and the sections amended; and the section or sections so amended shall be repealed.

SEC. 20. The presiding officer of each house shall sign publicly, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and joint resolutions passed by the legislature.

SEC. 21. Each member of the legislature shall receive for his services three dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route. *Provided, however*, That they shall not receive pay for more than forty days at any one session.

SEC. 22. The legislature shall never authorize any lottery, or grant any divorce.

SEC. 23. The legislature shall provide by law that all stationery required for the use of the state, and all printing authorized and required by them to be done for their use, or for the state, shall be let by contract to the lowest bidder; but the legislature may establish a maximum price. No member of the legislature, or other state officer shall be interested, either directly or indirectly, in any such contract.

SEC. 24. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.

SEC. 25. Members of the legislature, and all officers executive and judicial, except such inferior officers as may be by law exempted, before they enter upon the duties of their respective offices, shall take and subscribe an oath or affirmation to support the constitution of the United States, and the constitution of the state of Nebraska, and faithfully discharge the duties of their respective offices to the best of their ability.

SEC. 26. The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same, in such manner as shall be prescribed by law.

SEC. 27. In all elections by the legislature, the members thereof shall vote *viva voce*, and their votes shall be entered on the journal.

SEC. 28. The house of representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachment shall be tried by the senate; and the senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators.

SEC. 29. The governor, secretary of state, auditor, treasurer, and judges of the supreme and district courts, shall be liable to impeachment for any misdemeanor in office: but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust or profit under this state; but the party convicted or acquitted, shall, nevertheless, be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the legislature may provide.

SEC. 30. No money shall be drawn from the treasury, except in pursuance of a specific appropriation made by law; and no appropriation shall be made for a longer period than two years.

SEC. 31. The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy where no provision is made for that purpose in this constitution.

SEC. 32. The legislature shall not authorize the borrowing of money or the issuance of state bonds for any sum exceeding in the aggregate fifty thousand dollars, without submitting a proposition therefor to a vote of the people for their approval or rejection, except in case of war to repel invasion or suppress insurrection.

ARTICLE III.

EXECUTIVE.

SECTION 1. The executive department shall consist of a governor, secretary of state, auditor and treasurer, who shall be chosen by the electors of the state, on the second Tuesday of October, and at the places of voting for members of the legislature.

SEC. 2. The governor, secretary of state and treasurer shall hold their offices for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified.

SEC. 3. The returns of every election, for the officers named in the foregoing section, shall be sealed up and transmitted to the seat of government by the returning officers, directed to the president of the Senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the legislature. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses.

SEC. 4. No person except a citizen of the United States, and a qualified elector of the state, shall be eligible to any office provided for by this constitution.

SEC. 5. Should there be no session of the legislature in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the secretary of state, and opened, and the result declared by the governor, in such manner as may be provided by law.

SEC. 6. The supreme executive power of this state shall be vested in the governor.

SEC. 7. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.

SEC. 8. He shall communicate at every session, by message to the legislature, the condition of the state, and recommend such measures as he shall deem expedient.

SEC. 9. He may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened.

SEC. 10. In case of disagreement between the two houses in respect to the time of adjournment, he shall have power to adjourn the legislature to such time as he may think proper, but not beyond the regular meetings thereof.

SEC. 11. He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States.

SEC. 12. He shall have power, after conviction, to grant reprieves, commutations and pardons, for all crimes and offenses except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations as to the manner of applying for pardon as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the legislature, at its next meeting, when the legislature shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the legislature at every regular session, each case of reprieve, commutation or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon or reprieve, with his reasons therefor.

SEC. 13. There shall be a seal of the state, which shall be kept by the governor, and used by him officially; and shall be called "The Great Seal of the State of Nebraska."

SEC. 14. All grants and commissions shall be issued in the name and by the authority of the state of Nebraska, sealed with the great seal, signed by the governor, and countersigned by the secretary of state.

SEC. 15. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor, except as herein provided.

SEC. 16. In case of the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the secretary of state, until such disability shall cease, or the vacancy be filled.

SEC. 17. If, during the vacancy of the office of governor, the secretary of state shall be impeached, displaced, resign, die or be absent from the state, the powers and duties of the office of governor shall devolve upon the president of the senate; and should a vacancy occur by impeachment, death, resignation, or absence from the state of the president of the senate, the speaker of the house of representatives shall act as governor till the vacancy be filled.

SEC. 18. The governor shall receive during his continuance in office an annual compensation of one thousand dollars; the secretary of state, six hundred dollars; the state treasurer, four hundred dollars; and the state auditor, eight hundred dollars.

SEC. 19. Every bill which shall have passed the legislature, shall before it becomes a law, be presented to the governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the legislature shall by their adjournment prevent its return, in which case it shall not be a law.

SEC. 20. The secretary, auditor, and treasurer of state, shall severally perform such duties as shall be prescribed by law.

ARTICLE IV.

JUDICIARY.

SECTION 1. The judicial power of the state shall be vested in a supreme court, district courts, probate courts, justices of the peace, and such inferior courts as the legislature may from time to time establish.

The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and shall hold a term of the supreme court at the seat of government of the state annually. Said supreme judges shall be elected by the qualified electors of the state, at such time and in such manner as may be provided by law. Said justices of the supreme court shall hold their office for the term of six years from the time of their election and until their successor shall have been elected and qualified.

SEC. 2. The state shall be divided into three judicial districts, and the district courts shall be held at such times and places as may be provided by law, and the legislature shall by law assign the justices to hold district courts in the several districts: *Provided*, That until the legislature shall have provided by law, the governor shall have authority to make such assignment.

SEC. 3. The supreme court shall have appellate jurisdiction only, except in cases relating to *revenue*, *mandamus*, *quo warranto*, *habeas corpus* and such cases of impeachment as may be required to be tried before it; and both the supreme and district courts shall have both chancery and common law jurisdiction.

SEC. 4. The jurisdiction of the several courts herein provided for both appellate and original shall be as fixed by law: *Provided*, That probate courts, justices of the peace, or any inferior court, that may be established by the legislature shall not have jurisdiction in any matter wherein the title or boundaries of land may be in dispute. Nor shall either of the courts mentioned in this proviso have the power to order or decree the sale or partition of real estate: and *Provided, further*, that justices of the peace, and such inferior courts as may be established by the legislature, shall not have jurisdiction when the debt or sum claimed shall exceed one hundred dollars, and the jurisdiction of the district or probate courts, and justices of the peace, shall be uniform throughout the state.

SEC. 5. Probate judges, justices of the peace, and persons holding inferior courts, herein authorized to be established by the legislature, shall be elected by the electors of the several districts for which they may be elected in the manner and time fixed by law.

SEC. 6. The salary of the justices of the supreme court shall be two thousand dollars each per annum and no more; and all other judicial officers shall be paid for their services in fees to be prescribed by law.

SEC. 7. The legislature shall by law provide that on the entry or commencement of any suit in the district court, the party so commencing or entering such suit, shall, before the same is commenced or entered, pay to the clerk of the said district court the sum of five dollars; and in like manner on the entry or commencement of any suit in the supreme court, shall pay the sum of ten dollars to the clerk thereof, which money so paid shall be for use of the state, and shall be paid by said clerks to the proper officers designated by law, as by law may be required; which money so received shall be held and esteemed as a judiciary fund, and to be applied in payment of the salaries of the justices of the supreme court. Which amounts so paid shall be taxed as costs against the unsuccessful party, and collected as other costs: *Provided*, the legislature may provide by law for dispensing with the payment of said sums of money in cases where the party so commencing or entering suit shall be really unable to pay the same, and the amount shall in all cases be taxed and collected as other costs: *Provided, also*, that the legislature shall have power whenever the amount so received shall exceed the salaries of the judges of the supreme court, to reduce the amount to be paid so that the gross amount will not exceed such salaries.

SEC. 8. The legislature may, after the year one thousand eight hundred and seventy-five, increase the number of justices of the supreme court, and the judicial districts of the state.

SEC. 9. In all cases heard before the supreme court, as an appellate court, the justice who may have tried such cause in the court below, shall not participate in the decision thereof, until the other two justices, if present, shall have failed to agree in the decision of such cause.

SEC. 10. All process, writs, and other proceedings, shall run in the name of "*The People of the State of Nebraska.*"

ARTICLE V.

FINANCE.

SECTION 1. No money shall be paid out of the treasury, except in pursuance of an appropriation by law.

SEC. 2. The credit of the state shall never be given or bound in aid of any individual, association or corporation.

SEC. 3. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year, and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year.

SEC. 4. For the purpose of defraying extraordinary expenditures, the state may contract public debts; but such debts shall never in the aggregate exceed fifty thousand dollars. Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such laws; and every such law shall provide for the levying of an annual tax sufficient to pay the annual interest of such debt, and the principal within ten years from the passage of such law; and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of such debts shall have been wholly paid.

SEC. 5. The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized, or to the re-payment of the debt thereby created.

SEC. 6. The state shall never contract any debt for works of internal improvement, or be a party in carrying on such works; but whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works, and shall devote thereto the avails of such grant, and may pledge or appropriate the revenues derived from such works in aid of their completion.

ARTICLE VI.

EMINENT DOMAIN.

SECTION 1. The state shall have concurrent jurisdiction on all rivers bordering on this state, so far as such rivers shall form a common boundary to the state, and any other state or territory now and hereafter to be formed and bounded by the same. And the river Missouri, and the navigable waters leading into the Missouri, and the carrying places between the same, shall be common highways, and forever free, as well as to the inhabitants of the state as to the citizens of the United States, without any tax, impost, or duty therefor.

SEC. 2. The title of all lands and other property, which have accrued to the territory of Nebraska, by grant, gift, purchase, forfeiture, escheat, or otherwise, shall vest in the state of Nebraska.

SEC. 3. The people of the state, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail from defect of heirs, shall revert or escheat to the people.

ARTICLE VII.

EDUCATION.

SECTION 1. The principal of all funds arising from the sale, or other disposition of lands or other property, granted or intrusted to this state for educational and religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations. The legislature shall make such provisions by taxation or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious sect or sects shall ever have any exclusive right to, or control of, any part of the school funds of this state.

SEC. 2. The university lands, school lands, and all other lands which have been acquired by the territory of Nebraska or which may hereafter be acquired by the state of Nebraska, for educational or school purposes, shall not be aliened or sold for a less sum than five dollars per acre.

ARTICLE VIII.

CORPORATIONS.

SECTION 1. The legislature shall pass no special act conferring corporate powers.

SEC. 2. Corporations may be formed under general laws.

SEC. 3. The property of corporations now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

SEC. 4. The legislature shall provide for the organization of cities and incorporated villages by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credits, so as to prevent the abuse of such power.

ARTICLE IX.

AMENDMENTS.

SECTION 1. If at any time a majority of the senate and house of representatives shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature; and if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall at its next session provide for calling such convention.

ARTICLE X.

BOUNDARIES.

SECTION 1. The state of Nebraska shall consist of all the territory included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the western boundary of the State of Missouri, with the fortieth degree of north latitude; extending thence due west along said fortieth degree of north latitude, to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude, to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude, to a point formed by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree of north latitude to the Reya Paha river; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara river; thence down the middle of the channel of said Niobrara river, and following the meanderings thereof to its junction with the Missouri river; thence down the middle of the channel of said Missouri river, and following the meanderings thereof to the place of beginning.

ARTICLE XI.

SCHEDULE.

SECTION 1. That no inconvenience may arise from the change of territorial government to a state government, it is declared that all rights, suits, actions, prosecutions, judgments, recognizances, claims and contracts, both as respects persons and bodies-corporate, shall continue and be enforced, as if no change had taken place, and all laws, now in force shall remain in force until altered, amended, or repealed by the legislature; *Provided,* Wherever the word territory shall occur, it shall be construed to mean state, whenever it may be necessary, in order that such laws may conform to tne state government.

SEC. 2. All debts, fines, penalties, recognizances, and forfeitures, due and owing to the territory of Nebraska, shall inure to the benefit of the state, and all obligations and bonds to the territory of Nebraska or any officer thereof, shall be esteemed and taken as due and owing to the state of Nebraska, and may be in such manner enforced.

SEC. 3. The governor and all other officers of the territorial government, shall continue to discharge and exercise the duties of their respective offices, until superseded by the provisions of this constitution or the officers appointed or elected by authority of its provisions.

SEC. 4. The first election for governor, secretary of state, auditor of state, one representative to congress, the justices of the supreme court, the members of the senate and house of representatives, shall be held on the second day of June, one thousand eight hundred and sixty-six, at the places and in the manner now prescribed by law for general elections. The members of the senate shall be elected in and from the same districts that are now prescribed by law for councilmen districts. The members of the house of representatives shall be elected in and from the same districts that are now prescribed by law, for members of the house of representatives of the territory of Nebraska, and all the officers mentioned, to-wit: senators and representatives shall hold their offices until the first Monday in January, A D., 1867; governor, secretary of state, state auditor and treasurer, until the second Monday in January, A.D., 1869, and until their successors are elected and qualified; the supreme judges until the first day of January, A.D., 1873.

SEC. 5. The first session of the legislature shall be held at the capitol in the city of Omaha, commencing on the fourth day of July, A.D., 1866.

SEC. 6. This constitution is formed, and the state of Nebraska asks to be admitted into the union on an equal footing with the original states on the condition and faith of the terms of the propositions stated and specified in an act of congress, approved, April nineteenth, 1864, authorizing the people of the territory to form a constitution and state government; the people of the state of Nebraska hereby accepting the conditions in said act specified.

Sec. 7. The foregoing constitution shall be submitted to the electors of the territory of Nebraska at an election to be held on the second day of June in the year one thousand eight hundred and sixty-six, in the several election districts of this territory. The ballots at such elections shall be written or printed as follows:

Those in favor of the constitution, "*For the Constitution.*"

Those against the constitution, "*Against the Constitution.*"

The polls at such elections shall be open at the hour of nine o'clock A.M., and close at six o'clock P.M., and the returns of such elections shall be made to the acting governor of the territory, who together with the United States district attorney and chief justice of the territory, or any two of them, shall canvass the same, and if a majority of the legal votes shall be cast for said constitution, the same shall be the constitution of Nebraska.

Said governor shall certify the same to the president of the United States; *Provided*, that the said election shall be conducted and the returns made in the same manner and under the same regulations as are prescribed by law, in the case of the election of territorial officers.

The election returns for the governor, secretary of state, auditor, treasurer and supreme judges, shall be made to the same officers, and the canvass of such return made in the same manner as is now prescribed by law for delegates in congress.

Resolved by the Council and House of Representatives of the territory of Nebraska, That the foregoing constitution be submitted to the qualified electors of the territory, for their adoption or rejection, at an election, hereby authorized to be held at the time and in the manner specified in the seventh (7th) section of the schedule of said constitution, and that the returns and canvass of the votes cast at said election be made as in said section prescribed.

JAMES G. MEGEATH,
Speaker of the House of Representatives.
O. P. MASON,
President of the Council.
ALVIN SAUNDERS,
Governor of the Territory of Nebraska.

Approved, February 9th, 1866.

CONSTITUTION

OF THE

STATE OF NEBRASKA.

In force November 1, 1875.

PREAMBLE.

We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the constitution of the state of Nebraska:

ARTICLE I.—BILL OF RIGHTS.

SECTION 1. All persons are by nature free and independent, and have certain **inherent** and inalienable **rights**; among these are life, liberty, and the pursuit of happiness. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

See **22**, 266 (34 N. W. 499).

SEC. 2. There shall be neither **slavery** nor involuntary servitude in this state, otherwise than for punishment of crime, whereof the party shall have deen duly convicted.

SEC. 3. No person shall be deprived of life, liberty, or property, without **due process of law**.

Penalty for failure to remove fence not in conflict with this. **23**, 303 (36 N. W. 548).
Complainant cannot be imprisoned for costs under section 322 of Criminal Code. **11**, 532 (10 N. W. 449).
"Due process of law" and "law of the land" mean same thing, and are designed to exclude arbitrary power from every branch of our government. **6**, 42; **23**, 377 (36 N. W. 554).

SEC. 4. [**Freedom of Conscience.**]—All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect, or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

SEC. 5 Every person may **freely speak, write,** and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

SEC. 6. The right of **trial by jury** shall remain inviolate, but the legislature may authorize trial by a jury of a less number than twelve men, in courts inferior to the district court.

Cases of mutual accounts may be examined into by jury. **5,** 155. This does not apply to offenses against city ordinance. **26,** 466 (42 N. W. 419). Garnishee cannot be *ordered* to pay over money without a suit, if he sets up any legal or equitable claim to it. **14,** 242 (15 N. W. 342). Cited **11,** 573 (10 N. W. 481).

SEC. 7. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable **searches** and **seizures**, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

SEC. 8. The privilege of the writ of **habeas corpus** shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

SEC. 9. **All persons** shall be **bailable** by sufficient sureties, except for treason and murder, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 10. **[Felonies—Prosecution.]**—No person shall be held to answer for a criminal offense, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in case of impeachment, and in cases arising in the army and navy or in the militia, when in actual service in time of war or public danger, unless on a presentment or indictment of a grand jury; *Provided,* That the legislature may, by law, provide for holding persons to answer for criminal offenses on information of a public prosecutor; and may, by law, abolish, limit, change, amend, or otherwise regulate the grand jury system.

Information may take place of indictment. **29,** 440 (29 N. W. —).

SEC. 11. In all **criminal prosecutions** the accused shall have the right to appear and defend in person or by counsel, to demand the nature and cause of accusation, and to have a copy thereof; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an **impartial** jury of the county or district in which the offense is alleged to have been committed.

One having formed an opinion from reading reports of testimony is incompetent as a juror, though he may swear that he can return an impartial verdict. **5,** 34. Fundamental principle of law that the property of one person cannot be given to another without his consent. **6,** 71. One having expressed or formed an opinion is incompetent as a juror. **4,** 548. Judge has a right to designate the county in which a prisoner shall be tried for committing a crime in unorganized territory. **4,** 226. Where defendant was indicted for felony, county was not liable for costs of his witnesses. **14,** 19 (14 N. W. 549). The word "district" defined. **11,** 13 (7 N. W. 444). A county organized, but not for judicial purposes, is not a "district" under this section. **11,** 13 (7 N. W. 444). See **29,** 379 (45 N. W. 694). See note to section 3 citing **11,** 532. (10 N. W. 449).

SEC. 12. **No person** shall be compelled, in any criminal case, to give evidence against himself, or be twice put in **jeopardy** for the same offense.

Has no reference to recovering penalty for illegal sale of liquors. **12,** 540 (11 N. W. 848).

SEC. 13. All **courts** shall be **open**, and every person, for any injury done him in his lands, goods, person or reputation, shall have a remedy by due course of law, and justice administered **without** denial or **delay**.

Legislature clothed with power to furnish the necessary tribunal for the prompt disposition of cases pending in the courts. **21,** 661 (33 N. W. 426).

SEC. 14. **Treason** against the state shall consist only in levying war against the state, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SEC. 15. All **penalties** shall be proportioned to the nature of the offense, and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the state for any offense committed within the state.

Penalty for failure to remove fence not in conflict with this. **23,** 303 (36 N. W. 548).

SEC. 16. **[Prohibited legislation.]**—No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

Law interfering with vested rights not valid. **7,** 180. Law changing the mode of enforcing a contract valid. **6,** 36. Act requiring holder of county warrant to take bonds in payment bearing a less rate of interest unconstitutional. **1,** 381.

SEC. 17. The **military** shall be in strict subordination to the civil power.

SEC. 18. **No soldier** shall, in time of peace, be **quartered** in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 19. The **right** of the people, peaceably, **to assemble** to consult for the common good, and to **petition** the government, or any department thereof, shall never be abridged.

SEC. 20. No person shall be **imprisoned for debt** in any civil action on *mesne* or final process, unless in cases of fraud.

Village occupation tax a mere civil liability and cannot be enforced by imprisonment. **27,** 64 (42 N. W. 913). Does not apply to imprisonment for bastardy. **13,** 19[illegible], 195 (13 N. W. 174). **24,** 69 (38 N. W. 28).

SEC. 21. **[Eminent Domain.]**—The property of no person shall be taken or damaged for public use without just compensation therefor.

Words "or damaged" were not in the old constitution of 1866. History of section; general benefits to property at large do not lessen the damage, special benefits may. **23,** 331 (36 N. W. 533). The words "or damaged" inserted to cover a class of cases not provided for in former section. **22,** 351 (35 N. W. 183). "Damaged" includes all diminution in value of property caused by the exercise of the right of eminent domain. **26,** 571 (42 N. W. 93). Railroad company liable for damages to a lot owner by reason of running its road through an alley adjoining his lot. **14,** 554 (16 N. W. 475). When, on appeal in right of way case, the owner recovers more damage than was found by the commissioners, he may have interest thereon from the time he was entitled to compensation. **13,** 320 (14 N. W. 407). Railroad company is a trespasser if they enter land before condemnation made. **18,** 86 (24 N. W. 439). Law giving double damages for injuries done by railroad void. **6,** 46. A city is liable for damage occasioned by filling in street after buildings erected. **17,** 548 (23 N. W. 503). Cited **12,** 166 (10 N. W. 547). **10,** 101 (4 N. W. 424).

SEC. 22. All **elections** shall be **free;** and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

SEC. 23. The **writ of error** shall be a writ of right in all cases of felony; and in capital cases shall operate as a supersedeas to stay the execution of the sentence of death until the further order of the supreme court in premises.

Prisoner must pay for his transcript. **8,** 24.

SEC. 24. The right to be heard in all **civil cases** in the court of last resort, by **appeal, error,** or otherwise, shall not be denied.

20, 604 (31 N. W. 117).

SEC. 25. **No distinction** shall ever be made by law between **resident aliens** and **citizens** in reference to the possession, enjoyment, or descent of property.

2, 9.

SEC. 26. This **enumeration of rights** shall not be construed to impair or deny others retained by the people, and all powers not herein delegated remain with the people.

ARTICLE II.—DISTRIBUTION OF POWERS.

SECTION 1. The powers of the government of this state are divided into three distinct departments: the legislative, executive, and judicial, and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

ARTICLE III.—LEGISLATIVE.

SECTION 1. The **legislative authority** is vested in a senate and house of representatives.

An act interpreting former laws, and in effect a mandate to courts to so construe them, void. **7,** 180.

SEC. 2. The legislature shall provide by law for an **enumeration** of the inhabitants of the state in the year eighteen hundred and eighty-five, and every ten years thereafter; and at its first regular session after each enumeration, and also after each enumeration made by the authority of the United States, but at no other time, the legislature shall **apportion** the senators and representatives according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

County omitted from apportionment act retains its existing representation. **24,** 588 (39 N. W. 612).

SEC. 3. The **house of representatives** shall consist of eighty-four **members**, and the senate shall consist of thirty members, until the year eighteen hundred and eighty, after which time the number of members of each house shall be regulated by law; but the number of representatives shall never exceed one hundred, nor that of senators thirty-three. The sessions of the legislature shall be biennial, except as otherwise provided in this constitution. (See chapter 3, "Apportionment.")

SEC. 4. The **terms of office** of members of the legislature shall be two years, and they shall each receive for their services three dollars for each day's attendance during the session, and ten cents for every mile they shall travel in going to and returning from the place of meeting of the legislature on the most usual route; *Provided however*, That they shall not receive pay for more than forty days at any one session; and neither members of the legislature nor employes shall receive any pay or perquisites other than their pay per diem and mileage.

There is no law authorizing a standing committee of either house to employ a clerk, and auditor cannot be compelled to draw a warrant to pay such a clerk for his services. **14,** 440 (16 N. W. 481).

SEC. 5. **No person** shall be **eligible** to the office of senator or member of the house of representatives, who shall not be an elector, and have resided within the district from which he is elected for the term of one year next before his election, unless he shall have been absent on the public business of the United States, or of this state. And no person elected as aforesaid shall hold his office after he shall have removed from such district.

SEC. 6. **No person** holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be **eligible** to or have a seat in the legislature; but this provision shall not extend to precinct or township officers, justices of the peace, notaries public, or officers of the militia; nor shall any person interested in a contract with, or an unadjusted claim against the state, hold a seat in the legislature.

SEC. 7. [**Rules.**]—The session of the legislature shall commence at twelve o'clock (noon) on the first Tuesday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this constitution. A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election returns, and qualifications of its members; shall choose its own officers; and the senate shall choose a temporary president to preside when the lieutenant-governor shall not attend as president, or shall act as governor. The secretary of state shall call the house of representatives to order at the opening of each new legislature, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat. No member shall be expelled by either house, except by a vote of two-thirds of all the members elected to that house, and no member shall be twice expelled for the same offense. Each house may punish by imprisonment any person, not a member thereof, who shall be guilty of disrespect to the house, by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

The right to punish for contempt is inherent in every court having common law jurisdiction. **27,** 852 (37 N. W. 668).

SEC. 8. Each house shall keep a **journal** of its proceedings, and publish them (except such parts as may require secrecy), and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal. All votes in either house shall be *viva voce*. The doors of each house and of [the] committee of the whole shall be open, unless when the business shall be such as ought to be kept secret. Neither house shall, without the consent of the other, adjourn for more than three days.

SEC. 9. Any **bill** may originate in either house of the legislature, except bills appropriating money, which shall originate only in the house of representatives, and all bills passed by one house may be amended by the other.

SEC. 10. **The enacting clause** of a law shall be, "Be it enacted by the legislature of the state of Nebraska," and no law shall be enacted except by bill. No bill shall be passed unless by assent of a majority of all the members elected to each house of the legislature. And the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays shall be entered upon the journal.

SEC. 11. **Every bill** and concurrent resolution shall be **read** at large on three different days in each house, and the bill and all amendments thereto shall be printed before the vote is taken upon its final passage. No bill shall contain more than **one subject**, and the same shall be clearly expressed in its title. And no law shall be amended unless the **new act** contains the section or **sections** so **amended,** and the section or sections so amended shall be repealed. The **presiding officer** of each house shall **sign,** in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and concurrent resolutions passed by the legislature.

Bill to have but one general object which must be fairly expressed in the title. **5,** 311. **5,** 516. Amendatory act valid if not inconsistent with title and subject matter of amended one, though there be apparent confusion in application to provisions sought to be amended. **27,** 764, 8 (43 N. W. 1140). **29,** 149. A provision in an amendatory act repealing an act not connected with the subject of the amendment is void. Where title has two subjects, act may be sustained as to one. **17,** 85 (22 N. W. 228). Part of an act may be valid and part not. **16,** 239 (20 N. W. 312). **25,** 457 (41 N. W. 280). One house cannot amend title of bill originating in the other. **17,** 394 (23 N. W. 3). It is sufficient if subject is *fairly* expressed in the title. **16,** 683 (21 N. W. 398). Title an index to legislative intent. **6,** 485. Title of amendatory act cannot be broader than the original. **9,** 511 (4 N. W. 240). An act broader than its title may be declared void as to the excess, but valid as to the rest. **25,** 676 (41 N. W. 638). "An act to prohibit the fraudulent transfer of property and to declare the same a crime and to prescribe the punishment thereof" held constitutional, the act having but one subject. **21,** 53 (31 N. W. 258). The title of the act of June 6, 1871, amending sections 50, 51, 71, and 105 of revenue act valid. **13,** 17 (12 N. W. 832). Section 8 of "An act to exempt Homesteads from Judicial Sale," approved Feb. 19, 1877, is within the title and is valid. **13,** 122 (12 N. W. 831). The title of the act which took effect Sept. 1, 1879, "Counties and County Officers," is not open to the constitutional objection of containing more than one subject. **12,** 387 (11 N. W. 495). When title of act is to *amend* a particular section of the statute, the proposed amendment must be germane to the subject matter of the section sought to be amended. **11,** 377 (9 N. W. 477). The title of an "Act regulating the herding and driving of stock," approved Feb. 26, 1879, is not comprehensive enough to authorize the provision in section four giving damages for the castration of animals. **13,** 253 (13 N. W. 276). Where act not complete in itself, but amendatory of a former, statute is void. **7,** 413. Old section need not be recited in amendatory act. **1,** 199. Law complete and repealing the provisions under which acts were formerly done is valid. **6,** 36. Where the new act is in the very words of the act it repeals and the evident intention was to continue it in force (with a lesser penalty), this intention will be given effect and will not prevent the prosecution for a crime committed before the repeal. **15,** 448 (19 N. W. 686). Rule as to repeal of statutes by implication. **18,** 140 (24 N. W. 447). Two amendments to same act on succeeding days, how interpreted. **23,** 134 (36 N. W. 348). A later statute, which contains provisions clearly repugnant to a former, repeals the former as completely as though it contained express words to that effect. **14,** 31 (14 N. W. 660). Legislature cannot pass law to legalize bonds already issued. **6,** 234. Does not require the printing of amendments after the bill has been put upon its final passage. **9,** 494 (4 N. W. 75). Failure of the presiding officer of the senate to sign a bill which the journal shows passed does not affect the validity of the act. **9,** 129 (1 N. W. 1008). **17,** 88 (22 N. W. 119). The certificate of the presiding officers that the bill has passed is only *prima facie* evidence of the fact. The journals are higher evidence. **18,** 237 (25 N. W. 77). In amending an act it may be designated by its title or chapter in the statutes. **20,** 377 (30 N. W. 267). **25,** 817 (41 N. W. 796).

SEC. 12. **Members** of the legislature in all cases except treason, felony or breach of the peace, shall be **privileged** from arrest during the session of the legislature, and for fifteen days next before the commencement and after the termination thereof.

SEC. 13. **No** person elected to the legislature shall receive any **civil appointment** within this state, from the governor and senate **during** the **term** for which he has been elected. And all such appointments, and all votes given for any such member for any such office or appointment, shall be void. Nor shall any **member** of the legislature, or any state officer, be **interested**, either directly or indirectly, **in** any **contract with** the **state**, county, or city, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

SEC. 14. [**Impeachment.**]—The senate and house of representatives, in joint convention, shall have the sole power of impeachment, but a majority of the members elected must concur therein. Upon the entertainment of a resolution to impeach by either house, the other house shall at once be notified thereof, and the two houses shall meet in joint convention for the purpose of acting upon such resolution within three days of such notification. A notice of an impeachment of any officer other than a justice of the supreme court, shall be forthwith served upon the chief justice by the secretary of the senate, who shall thereupon call a session of the supreme court to meet at the capital within ten days after such notice to try the impeachment. A notice of an impeachment of a justice of the supreme court shall be served by the secretary of the senate upon the judge of the judicial district within which the capital is located, and he thereupon shall notify all the judges of the district court in the state to meet with him within thirty days at the capital, to sit as a court to try such impeachment, which court shall organize by electing one of its number to preside. No person shall be convicted without the concurrence of two-thirds of the members of the court of impeachment, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit or trust in this state, but the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his official duties after he shall have been impeached and notified thereof, until he shall have been acquitted.

SEC. 15. **[Prohibited special legislation.]**—The legislature shall not pass local or special laws in any of the following cases, that is to say:

For granting divorces. Changing the names of persons or places. Laying out, opening, altering and working roads or highways. Vacating roads, town plats, streets, alleys, and public grounds. Locating or changing county seats. Regulating county and township offices. Regulating the practice of courts of justice. Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables. Providing for changes of venue in civil and criminal cases. Incorporating cities, towns, and villages, or changing or amending the charter of any town, city, or village. Providing for the election of officers in townships, incorporated towns or cities. Summoning or empaneling grand or petit juries. Providing for the bonding of cities, towns, precincts, school districts, or other municipalities. Providing for the management of public schools. Regulating the interest on money. The opening and conducting of any election, or designating the place of voting. The sale or mortgage of real estate belonging to minors or others under disability. The protection of game or fish. Chartering or licensing ferries or toll bridges. Remitting fines, penalties, or forfeitures. Creating, increasing, and decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed. Changing the law of descent. Granting to any corporation, association or individual, the right to lay down railroad tracks, or amending existing charters for such purpose. Granting to any corporation, association, or individual, any special or exclusive privileges, immunity or franchise whatever. In all other cases where a general law can be made applicable, no special law shall be enacted.

Under an act passed in 1875, authorizing commissioners of Jefferson county to issue bonds, sell the same, and pay outstanding warrants issued to contractors for erection of county buildings; *held*, that the legislature had full authority under the constitution then in force to pass such law. **5,** 136. Allowing forty per cent on tax sale certificates not in violation of the provision that "the legislature shall not pass any local or special laws * * regulating the interest on money." **11,** 72 (7 N. W. 861). Legislature has no authority to pass a law enabling a school district to vote bonds. **8,** 179. **12,** 94 (10 N. W. 568). **23,** 776 (37 N. W. 657).

SEC. 16. The legislature shall never grant any **extra compensation** to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.

SEC. 17. The legislature shall never alienate the **salt springs** belonging to the state.

SEC. 18. **Lands** under the control of the state shall **never** be **donated** to railroad companies, private corporations, or individuals.

SEC. 19. Each legislature shall make **appropriations** for the expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriations shall end with such fiscal quarter. And whenever it is deemed necessary, to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to each house, and shall not exceed the amount of revenue authorized by law to be raised in such time. Bills making appropriations for the pay of members and officers of the legislature, and for the salaries of the officers of the government, shall contain no provision on any other subject.

Fiscal quarter means the legislative quarter in which the session is to be held. **5,** 570. Fiscal year begins December 1st. Appropriations extend to end of first quarter after adjournment of next regular session. **22,** 38 (33 N. W. 711). Where entire amount derived from sale of state lots and lands, was appropriated, and sale was made partly on credit, *held*, that warrants could be drawn upon whole amount of purchase price at once, and without waiting for full payment thereof. **24,** 790 (40 N. W. 316). See note to sec. 22 citing **14,** 444 (16 N. W. 481).

SEC. 20. All **offices** created by this constitution shall become **vacant** by the death of the incumbent, by removal from the state, resignation, conviction of a felony, impeachment, or becoming of unsound mind. And the legislature shall provide by general law for the filling of such vacancy when no provision is made for that purpose in this constitution.

As to what constitutes a vacancy. **17,** 599 (24 N. W. 282).

SEC. 21. The legislature shall not authorize any **games of chance,** lottery, or gift enterprise under any pretense, or for any purpose whatever.

SEC. 22. **[State funds—How drawn.]**—No allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation and upon an account specifying each item. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued by the auditor thereon, and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall within sixty days after the adjournment of each session of the legislature, prepare and publish a full statement of all moneys expended at such session, specifying the amount of each item, and to whom and for what paid.

Intended to establish a permanent rule in regard to future payments of expenditures of the state. **6,** 513. A specific appropriation is one expressly providing funds for a particular purpose. **15,** 609 (19 N. W. 566). No appropriation necessary to pay salary of officer fixed by constitution. Officers whose salaries are not fixed by constitution depend upon legislative appropriation. **4,** 218. **6,** 17. The voucher of the officers of the senate will not authorize the auditor to draw a warrant in favor of a party, unless the claim is authorized by law. **14,** 444 (16 N. W. 481). An appropriation for "conveying convicts to the penitentiary" cannot be drawn against for "conveying juvenile offenders to the reform school." **12,** 408 (11 N. W. 860). Money due county treasurer as fees can not be paid except where there is a specific appropriation. **18,** 222 (24 N. W. 683). Appropriation of $95,000.00 to provide for the salaries of nineteen judges is an appropriation in gross. **21,** 662 (33 N. W. 426). Each appropriation contained in the general appropriation bill must be a specific appropriation for the purpose named, and the account must be itemized. **22,** 45 (33 N. W. 711). See **4,** 507. **9,** 470 (4 N. W. 61).

SEC. 23. **No member** of the legislature shall be **liable** in any civil or criminal action whatever **for** words spoken in **debate.**

SEC. 24. **[Acts; Taking effect; Publication.]**—No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency (to be expressed in the preamble or body of the act) the legislature shall, by a vote of two-thirds of all the members elected to each house otherwise direct. All laws shall be published in book form within sixty days after the adjournment of each session, and distributed among the several counties in such manner as the legislature may provide.

ARTICLE [IV.]—LEGISLATIVE APPORTIONMENT.*

Until otherwise provided by law, senatorial and representative districts shall be formed, and senators and representatives apportioned, as follows:

SENATORIAL DISTRICTS.

District No. 1. Shall consist of the county of Richardson, and be entitled to two senators.
District No. 2. Shall consist of the county of Nemaha, and be entitled to one senator.
District No. 3. Shall consist of the county of Otoe, and be entitled to two senators.

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* For present apportionment see *post*, ch. 3.

District No. 4. Shall consist of the county of Cass, and be entitled to one senator.

District No. 5. Shall consist of the county of Douglas, and be entitled to two senators.

District No. 6. Shall consist of the counties of Douglas and Sarpy, and be entitled to one senator.

District No. 7. Shall consist of the county of Washington, and be entitled to one senator.

District No. 8. Shall consist of the county of Dodge, and be entitled to one senator.

District No. 9. Shall consist of the county of Cuming, and be entitled to one senator.

District No. 10. Shall consist of the counties of Burt and Dakota, and be entitled to one senator.

District No. 11. Shall consist of the counties of Madison, Stanton, Wayne, Pierce, Antelope, and Boone, and be entitled to one senator.

District No. 12. Shall consist of the counties of Dixon, Cedar, Knox, Holt, and the unorganized territory west of Holt, and be entitled to one senator.

District No. 13. Shall consist of the counties of Hall, Howard, Merrick, Greeley, and the unorganized territory north of Greeley, and be entitled to one senator.

District No. 14. Shall consist of the counties of Platte and Colfax, and be entitled to one senator.

District No. 15. Shall consist of the counties of Butler and Polk, and be entitled to one senator.

District No. 16. Shall consist of the county of Saunders, and be entitled to one senator.

District No. 17. Shall consist of the county of Lancaster, and be entitled to two senators.

District No. 18. Shall consist of the counties of Johnson and Pawnee, and be entitled to one senator.

District No. 19. Shall consist of the counties of Gage and Jefferson, and be entitled to one senator.

District No. 20. Shall consist of the county of Saline, and be entitled to one senator.

District No. 21. Shall consist of the county of Seward, and be entitled to one senator.

District No. 22. Shall consist of the counties of York and Hamilton, and be entitled to one senator.

District No. 23. Shall consist of the counties of Fillmore and Clay, and be entitled to one senator.

District No. 24. Shall consist of the counties of Adams, Webster, Nuckolls, and Thayer, and be entitled to one senator.

District No. 25. Shall consist of the counties of Buffalo, Kearney, Franklin, Harlan, Phelps, Sherman, Valley, and the unorganized territory west of Sherman, Valley, and senatorial district number thirteen (13), and be entitled to one senator.

District No. 26. Shall consist of the counties of Lincoln, Dawson, Gosper, Furnas, Red Willow, Frontier, Hitchcock, Dundy, Chase, Keith, Cheyenne, and the unorganized territory west of Frontier, and between Frontier and Chase, and be entitled to one senator.

REPRESENTATIVE DISTRICTS.

District No. 1. Shall consist of the county of Richardson, and be entitled to four representatives.

District No. 2. Shall consist of the county of Pawnee, and be entitled to two representatives.

District No. 3. Shall consist of the county of Gage, and be entitled to two representatives.

District No. 4. Shall consist of the county of Johnson, and be entitled to two representatives.

District No. 5. Shall consist of the county of Nemaha, and be entitled to three representatives.

District No. 6. Shall consist of the county of Otoe, and be entitled to four representatives

District No. 7. Shall consist of the county of Lancaster, and be entitled to four representatives.

District No. 8. Shall consist of the county of Saunders, and be entitled to three representatives.

District No. 9. Shall consist of the county of Cass, and be entitled to three representatives.

District No. 10. Shall consist of the county of Sarpy, and be entitled to one representative.

District No. 11. Shall consist of the county of Douglas, and be entitled to eight representatives.

District No. 12. Shall consist of the county of Dodge, and be entitled to two representatives.

District No. 13. Shall consist of the county of Washington, and be entitled to two representatives.

District No. 14. Shall consist of the county of Burt, and be entitled to one representative.

District No. 15. Shall consist of the county of Cuming, and be entitled to two representatives.

District No. 16. Shall consist of the county of Dakota, and be entitled to one representative.

District No. 17. Shall consist of the county of Dixon, and be entitled to one representative.

District No. 18. Shall consist of the county of Jefferson, and be entitled to one representative.

District No. 19. Shall consist of the county of Thayer, and be entitled to one representative.

District No. 20. Shall consist of the county of Nuckolls, and be entitled to one representative.

District No. 21. Shall consist of the county of Webster, and be entitled to one representative.

District No. 22. Shall consist of the county of Adams, and be entitled to one representative.

District No. 23. Shall consist of the county of Clay, and be entitled to one representative.

District No. 24. Shall consist of the county of Fillmore, and be entitled to one representative.

District No. 25. Shall consist of the county of Saline, and be entitled to three representatives.

District No. 26. Shall consist of the county of Seward, and be entitled to two representatives.

District No. 27. Shall consist of the county of York, and be entitled to two representatives.

District No. 28. Shall consist of the county of Hamilton, and be entitled to one representative.

District No. 29. Shall consist of the county of Hall, and be entitled to one representative.

District No. 30. Shall consist of the county of Buffalo, and be entitled to one representative.

District No. 31. Shall consist of the county of Lincoln, and be entitled to one representative.

District No. 32. Shall consist of the county of Harlan, and be entitled to one representative.

District No. 33. Shall consist of the counties of Howard and Greeley, and be entitled to one representative.

District No. 34. Shall consist of the county of Merrick, and be entitled to one representative.

District No. 35. Shall consist of the county of Polk, and be entitled to one representative.

District No. 36. Shall consist of the county of Butler, and be entitled to one representative.

District No. 37. Shall consist of the county of Colfax, and be entitled to one representative.

District No. 38. Shall consist of the county of Platte, and be entitled to one representative.

District No. 39. Shall consist of the county of Madison, and be entitled to one representative.

District No. 40. Shall consist of the county of Cedar, and be entitled to one representative.

District No. 41. Shall consist of the counties of Burt and Dodge, and be entitled to one representative.

District No. 42. Shall consist of the counties of Stanton, Wayne, and Pierce, and be entitled to one representative.

District No. 43. Shall consist of the counties of Knox and Holt, and the unorganized territory west of Holt, and be entitled to one representative.

District No. 44. Shall consist of the county of Antelope, and be entitled to one representative.

District No. 45. Shall consist of the counties of Boone, Valley, Sherman, and the unorganized territory west of Sherman and Valley counties, and west of the thirteenth senatorial district, and be entitled to one representative.

District No. 46. Shall consist of the counties of Dawson and Frontier, and be entitled to one representative.

District No. 47. Shall consist of the counties of Franklin and Kearney, and be entitled to one representative.

District No. 48. Shall consist of the counties of Furnas, Phelps, and Gosper, and be entitled to one representative.

District No. 49. Shall consist of the counties of Cheyenne, Keith, Dundy, Chase, Hitchcock, Red Willow, and the unorganized territory north of the county of Hitchcock, and be entitled to one representative.

District No. 50. Shall consist of the counties of Cass and Saunders, and be entitled to one representative.

District No. 51. Shall consist of the counties of Platte, Colfax and Butler, and be entitled to one representative.

District No. 52. Shall consist of the counties of Fillmore and Clay, and be entitled to one representative.

ARTICLE V.—EXECUTIVE DEPARTMENT.

SECTION 1. [**Officers.**]—The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, attorney-general, and commissioner of public lands and buildings, who shall each hold his office for the term of two years from the first Thursday after the first Tuesday in January next after his election, and until his successor is elected and qualified; *Provided, however*, that the first election of said officers shall be held on the Tuesday succeeding the first Monday in November, 1876, and each succeeding election shall be held at the same relative time in each even year thereafter. The governor, secretary of state, auditor of public accounts, and treasurer, shall reside at the seat of government during their terms of office, and keep the public records, books and papers there, and shall perform such duties as may be required by law.

SEC. 2. No **person** shall be **eligible** to the office of governor, or lieutenant-governor, who shall not have attained to the age of thirty years, and been for two years next preceding his election a citizen of the United States and of this state. None of the officers of the executive department shall be eligible to any other state office during the period for which they shall have been elected.

SEC. 3. The **treasurer** shall be **ineligible** to the office of treasurer for two years next after the expiration of two consecutive terms for which he was elected.

SEC. 4. [**Election—Canvass; contest.**]—The returns of every election for the officers of the executive department shall be sealed up and transmitted by the returning officers to the secretary of state, directed to the speaker of the house of representatives, who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, who shall, for that purpose, assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal and the highest number of votes, the legislature shall, by joint vote, choose one of such persons for said office. Contested elections for all of said offices shall be determined by both houses of the legislature, by joint vote, in such manner as may be prescribed by law.

SEC. 5. All civil **officers** of this state shall be liable to **impeachment** for any misdemeanor in office.

SEC. 6. The **supreme executive power** shall be vested in the governor, who shall take care that the laws be faithfully executed.

SEC. 7. The governor shall, at the commencement of each session, and at the close of his term of office, and whenever the legislature may require, give to the legislature information by **message,** of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall account to the legislature, and accompany his message with a statement of all moneys received and paid out by him from any funds subject to his order, with vouchers, and, at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

SEC. 8. [**Extra session.**]—The governor may, on extraordinary occasions, convene the legislature by proclamation, stating therein the purpose for which they are convened, and the legislature shall enter upon no business except that for which they were called together.

Proclamation calling the legislature together may be revoked before legislature meets. **3, 413.**

SEC. 9. [**Proroguing Legislature.**]—In case of a disagreement between the two houses with respect to the time of adjournment, the governor may, on the same being certified to him by the house first moving the adjournment, adjourn the legislature to such time as he thinks proper, not beyond the first day of the next regular session.

SEC. 10. [**Appointments.**]—The governor shall nominate, and, by and with the advice and consent of the senate (expressed by a majority of all the senators elected voting, by yeas and nays), appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise by law or herein provided for; and no such officer shall be appointed or elected by the legislature.

Power to appoint physician to the penitentiary vested in governor. **7, 42.** Governor appoints officers of state institutions. **18,** 340 (25 N. W. 342)

SEC. 11. In case of a **vacancy** during the recess of the senate, in any office which is not elective, the governor shall make a **temporary appointment** until the next meeting of the senate, when he shall nominate some person to fill such office; and any person so nominated, who is confirmed by the senate (a majority of all the senators elected concurring by voting yeas and nays), shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at request of the senate, or be appointed to the same office during the recess of the legislature.

SEC. 12. The governor shall have **power to remove** any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office, and he may declare his office vacant, and fill the same as herein provided in other cases of vacancy.

SEC. 13. The governor shall have the power to grant reprieves, commutations and **pardons** after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the legislature, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the reprieve, commutation or pardon.

SEC. 14. The governor shall be **commander-in-chief** of the military and naval forces of the state (except when they shall be called into the service of the United States), and may call out the same to execute the laws, suppress insurrection, and repel invasion.

SEC. 15. [**Veto power.**]—Every bill passed by the legislature, before it becomes a law, and every order, resolution, or vote, to which the concurrence of both houses may be necessary, (except on questions of adjournment,) shall be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If then three-fifths of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. In all such cases, the vote of each house shall be determined by yeas and nays, to be entered upon the journal. Any bill which shall not be returned by the governor within five days (Sunday excepted), after it shall have been presented to him, shall become a law, in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return; in which case it shall be filed, with his objections, in the office of the secretary of state within five days after such adjournment, or become a law. The governor may disapprove any item or items of appropriation contained in bills passed by the legislature, and the item or items so disapproved shall be stricken therefrom, unless re-passed in the manner herein prescribed in cases of disapproval of bills.

Bill retained by governor more than three days under constitution of 1867 became a law notwithstanding soon after he received it the legislature adjourned from March 29 to May 30. Adjournment referred to is an adjournment *sine die*. **11,** 377 (9 N. W. 477).

SEC. 16. [**Vacancy; succession.**]—In case of the death, impeachment and notice thereof to the accused, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties, and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant-governor.

SEC. 17. The lieutenant-governor shall be **president of the senate,** and shall vote only when the senate is equally divided.

SEC. 18. [**Succession.**]—If there be no lieutenant-governor, or if the lieutenant-governor, for any of the causes specified in section sixteen of this article, become incapable of performing the duties of the office, the president of the senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the senate for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives.

SEC. 19. The commissioner of **public lands and buildings,** the secretary of state, treasurer, and attorney-general, shall form a **board,** which shall have general supervision and control of all the buildings, grounds and lands of the state, the state prison, asylums, and all other institutions thereof except those for educational purposes; and shall perform such duties, and be subject to such rules and regulations, as may be prescribed by law.

Board cannot appoint and remove officers of state institutions. Institution for blind does not lie within the exception. **6,** 290. See **7,** 45.

SEC. 20. If the **office** of auditor of public accounts, treasurer, secretary of state, attorney-general, commissioner of public lands and buildings, or superintendent of public instruction, shall be **vacated** by death, resignation, or otherwise, it shall be the duty of the governor to fill the same by appointment; and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

SEC. 21. An **account** shall be kept by the **officers** of the executive department, and of all the **public institutions** of the state, of all moneys received or disbursed by them severally from all sources, and for every service performed, and a semi-annual report thereof be made to the governor, under oath, and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

SEC. 22. The **officers** of the executive department, and of all the public institutions of the state, shall, at least ten days preceding each regular session of the legislature, severally **report to** the **governor,** who shall transmit such reports to the legislature, together with the reports of the judges to the supreme court, of defects in the constitution and laws, and the governor, or either house of the legislature, may, at any time, require information in writing, under oath from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management, and expenses of their respective offices.

SEC. 23. There shall be a **seal of** the **state,** which shall be called the "Great seal of the State of Nebraska," which shall be kept by the secretary of state, and used by him officially, as directed by law.

SEC. 24. The **salaries** of the governor, auditor of public accounts and treasurer shall be two thousand five hundred ($2,500) dollars each per annum, and of the secretary of state, attorney-general, superintendent of public instruction, and commissioner of public lands and buildings, shall be two thousand ($2,000) dollars each per annum.

The lieutenant-governor shall receive twice the compensation of a senator, and after the adoption of this constitution they shall not receive to their own use any fees, costs, interest upon public moneys in their hands or under their control, perquisites of office or other compensation, and all fees that may hereafter be payable by law, for services performed by an officer, provided for in this article of the constitution, shall be paid in advance into the state treasury. There shall be no allowance for clerk hire in the offices of the superintendent of public instruction and attorney-general.

Office of auditor and commissioner of public lands and buildings might be held by one person until Jan. 1, 1877. **9**, 466 (4 N. W. 72). Secretary of state may hold office of adjutant-general and draw salary appropriated therefor by the legislature. **4**, 243. All fees earned or collected by auditor belong to the state, and certain fees received from insurance companies are no exception. **12**, 175 (10 N. W. 703). "Clerk" has its common law meaning, and it does not include deputy or stenographer. **25**, 669 (41 N. W. 643).

SEC. 25. The **officers** mentioned in this article shall give **bonds** in not less than double the amount of money that may come into their hands, and in no case in less than the sum of fifty thousand dollars, with such provisions as to sureties and the approval thereof, and for the increase of the penalty of such bonds as may be prescribed by law.

SEC. 26. **No other executive state office** shall be continued or created, and the duties now devolving upon officers not provided for by this constitution shall be performed by the officers herein created.

Does not prohibit appointment of deputies by state officers. **25**, 662 (41 N. W. 643). Office of adjutant-general not an executive office. **4**, 243. Office of land commissioner continued. **9**, 466 (4 N. W. 72).

ARTICLE VI.—THE JUDICIAL DEPARTMENT.

SECTION 1. The **judicial power** of this state shall be vested in a supreme court, district courts, county courts, justices of the peace, police magistrates, and in such other courts inferior to the district courts as may be created by law for cities and incorporated towns.

SEC. 2. The **supreme court** shall consist of three judges, a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in cases relating to the revenue, civil cases in which the state shall be a party, mandamus, quo warranto, habeas corpus, and such appellate jurisdiction as may be provided by law.

Process may be issued by supreme court for a defendant anywhere in the state in a *quo warranto* case. **28**, 455 (44 N. W. 471). Does not give court original equitable jurisdiction in a criminal case. **25**, 347 (41 N. W. 249). Have jurisdiction in action by state to wind up a bank. **28**, 682 (44 N. W. 998).

SEC. 3. At least two **terms** of the supreme court shall be held each year at the seat of government.

SEC. 4. The **judges** of the supreme court shall be **elected** by the electors of the state at large, and their **terms of office,** except of those chosen at the first election, as hereinafter provided, shall be six years.

SEC. 5. The **judges** of the supreme court shall immediately after the first election under this constitution, be **classified** by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years.

SEC. 6. The judge of the supreme court having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the **chief justice,** and as such shall preside at all terms of the supreme court; and in case of his absence, the judge having in like manner the next shortest term to serve shall preside in his stead.

SEC. 7. No **person** shall be **eligible** to the office of judge of the supreme court unless he shall be at least thirty years of age, and a citizen of the United States; nor unless he shall have resided in this state at least three years next preceding his election.

SEC. 8. There shall be appointed by the **supreme court** a **reporter**, who shall also act as clerk of the supreme court, and librarian of the law and miscellaneous library of the state, whose term of office shall be four years, unless sooner removed by the court, whose salary shall be fixed by law, not to exceed fifteen hundred dollars per annum. The copyright of the state reports shall forever belong to the state.

SEC. 9. The **district courts** shall have both chancery and common law **jurisdiction,** and such other jurisdiction as the legislature may provide, and the judges thereof may admit persons charged with felony to a plea of guilty, and pass such sentence as may be prescribed by law.*

District court given both equity and common law jurisdiction. **6,** 85. If the legislature confers a right upon any citizen, and provides no special tribunal for its enforcement, jurisdiction to enforce the same devolves upon the district court. **13,** 398 (14 N. W. 394).

SEC. 10. The state shall be divided into six judicial districts, in each of which shall be elected by the electors thereof, one judge, who shall be judge of the district court therein, and whose term of office shall be four years.

Until otherwise provided by law, said districts shall be as follows:

First District—The counties of Richardson, Johnson, Pawnee, Gage, Jefferson, Saline, Thayer, Clay, Nuckolls and Fillmore.

Second District. The counties of Nemaha, Otoe, Cass and Lancaster.

Third District. The counties of Douglas, Sarpy, Washington and Burt.

Fourth District. The counties of Saunders, Dodge, Butler, Colfax, Platte, Polk, Merrick, Hamilton, York, Seward, Hall and Howard.

Fifth District. The counties of Buffalo, Adams, Webster, Franklin, Harlan, Kearney, Phelps, Gosper, Furnas, Hitchcock, Dundy, Chase, Cheyenne, Keith, Lincoln, Dawson, Sherman, Red Willow, Frontier, and the unorganized territory west of said district.

Sixth District. The counties of Cuming, Dakota, Dixon, Cedar, Wayne, Stanton, Madison, Boone, Pierce, Knox, Antelope, Holt, Greeley, Valley, and the unorganized territory west of said district.

Unorganized territory attached to a county for "election, judicial and revenue" purposes is, for such purposes, a part of such county, and the district court sitting in that county has jurisdiction over crimes committed in said unorganized territory. **12,** 380 (11 N. W. 494).

SEC. 11. The **legislature,** whenever two-thirds of the members elected to each house shall concur therein, may, in or after the year one thousand eight hundred and eighty, and not oftener than once in every four years, **increase** the number of judges of the district courts, and the **judicial districts** of the state. Such districts shall be formed of compact territory, and bounded by county lines; and such increase, or any change in the boundaries of a district, shall not vacate the office of any judge.

Legislature may provide additional judge or judges for districts when needed. **18,** 416 (25 N.W. 585). Power of the legislature to increase the number of judges in one district does not exhaust the power of increasing in subsequent years in other districts. **21,** 659 (33 N. W. 426).

SEC. 12. The **judges** of the district courts may **hold** courts **for each other,** and shall do so when required by law.

See **14,** 539 (17 N. W. 117). Power of district judge to hold court in district other than that for which he was elected does not depend upon any condition except the consent of the proper judge. **8,** 484 (1 N. W. 454).

SEC. 13. The **judges** of the supreme and district courts shall each receive a **salary** of $2,500 per annum, payable quarterly.

SEC. 14. **No** judge of the supreme or district courts shall receive any **other compensation,** perquisite or benefit for or on account of his office in any form whatsoever, nor act as attorney or counselor-at-law, in any manner whatever; nor shall any salary be paid to any county judge.

SEC. 15. There shall be elected in and for each organized county, one **judge,** who shall be judge of the **county court** of such county, and whose term of office shall be two years.

This term cannot be shortened by the legislature. **16,** 568 (20 N. W. 875).

SEC. 16. **County courts** shall be courts of record, and shall have original **jurisdiction** in all matters of probate, settlements of estates of deceased persons, appointment of guardians and settlement of their accounts, in all matters relating to apprentices; and such other jurisdiction as may be given by general law. But they shall not have jurisdiction in criminal cases in which the punishment may exceed six months imprisonment, or a fine of over five hundred dollars; nor in actions in which title to real estate is sought to be recovered, or may be drawn in question; nor in actions on mortgages or contracts for the conveyance of real estate; nor in civil actions where the debt or sum claimed shall exceed one thousand dollars.

All provision applicable to courts of record applicable to county courts. **12,** 160 (10 N. W. 536). Have no jurisdiction over election contest in city on internal improvements. **13,** 398 (14 N. W. 394). Statute which authorized district courts to distribute estates of decedents was not in conflict with this section. **12,** 280 (11 N. W. 313). County judges and justices have jurisdiction to recover back money paid upon the purchase of real estate. **20,** 50 (28 N. W. 847).

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*See act changing judicial districts, *post*, chap. 8.

SEC. 17. **Appeals to the district courts** from the judgments of county courts shall be allowed in all criminal cases, on application of the defendant; and in all civil cases, on application of either party, and in such other cases as may be provided by law.

SEC. 18. **Justices of the peace** and **police magistrates** shall be elected in and for such districts, and have and exercise such **jurisdiction** as may be provided by law; *Provided*, That no justice of the peace shall have jurisdiction of any civil case where the amount in controversy shall exceed two hundred dollars; nor in a criminal case where the punishment may exceed three months imprisonment, or a fine of over one hundred dollars; nor in any matter wherein the title or boundaries of land may be in dispute.

Justices of the peace must hold office in and for the precincts for which they are elected. **4**, 413. Have jurisdiction to recover back money paid on purchase of real estate. **20**, 50 (28 N. W. 847).

SEC. 19. All **laws** relating to courts shall be general and of **uniform** operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform.

23, 776 (37 N. W. 657).

SEC. 20. All **officers** provided for in this article shall hold their offices until their successors shall be qualified, and they shall respectively reside in the district, county or precinct for which they shall be elected or appointed. The **terms** of office of all such officers, when not otherwise prescribed in this article, shall be two years. All officers, when not otherwise provided for in this article, shall perform such duties and receive such compensation as may be provided by law.

SEC. 21. In case the **office** of any judge of the supreme court, or of any district court, shall become **vacant** before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor shall be elected and qualified, and such successor shall be elected for the unexpired term at the first general election that occurs more than thirty days after the vacancy shall have happened. Vacancies in all other elective offices provided for in this article, shall be filled by election, but when the unexpired term does not exceed one year the vacancy may be filled by appointment, in such manner as the legislature may provide.

SEC. 22. The **state** may **sue** and **be sued,** and the legislature shall provide by law, in what manner and in what courts suits shall be brought.

State cannot be sued until after auditor refuses to adjust. **8**, 219. **7**, 103.

SEC. 23. The several **judges** of the courts of record shall have such **jurisdiction at chambers** as may be provided by law.

Judges of district courts as such have no inherent judicial authority at chambers. **7**, 386. Legislature can confer authority on district judges to confirm sales in vacation. **13**, 233 (13 N. W. 213).

SEC. 24. **All process** shall run in the name of "The State of Nebraska," and all prosecutions shall be carried on in the name of "The State of Nebraska."

The words "The People of the State of Nebraska," after the proper caption and before the name of the officer did not invalidate the writ. **13**, 382 (14 N. W. 170). Information whose caption is "The State of Nebraska" is sufficient. **24**, 101-2 (38 N. W. 36). Process for the punishment of a violation of a city ordinance should run in the name of the state. **4**, 101.

ARTICLE VII.—RIGHTS OF SUFFRAGE.

SECTION 1. **[Electors.]**—Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state six months, and in the county, precinct or ward, for the term provided by law, shall be an elector. *First.* Citizens of the United States. *Second.* Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States, on the subject of naturalization, at least thirty days prior to an election.

Law requiring voter to register on one of four days, the last being ten days before election, and unless so registered disqualified, is void. **22**, 271 (34 N. W. 499). Winnebago Indians held not to be entitled to vote. **28**, 466 (44 N. W. 471).

SEC. 2. **No person** shall be **qualified** to vote who is *non compos mentis*, or who has been convicted of treason or felony under the law of the state, or of the United States, unless restored to civil rights.

But conviction of a misdemeanor merely does not disqualify a person from voting or holding office. **10,** 248 (4 N. W. 1019).

SEC. 3. Every **elector in** the actual **military service** of the United States, or of this state, and not in the regular army, may exercise the right of suffrage at such place, and under such regulations as may be provided by law.

SEC. 4. **No soldier,** seaman, or marine in the army and navy of the United States, shall be deemed **a resident** of the state in consequence of being stationed therein.

SEC. 5. **Electors** shall in all cases, except treason, felony, or breach of the peace, be **privileged** from arrest during their attendance at elections, and going to and returning from the same, and no elector shall be obliged to do military duty on the days of election, except in time of war and public danger.

SEC. 6. All **votes** shall be **by ballot.**

ARTICLE VIII.—EDUCATION.

SECTION 1. The governor, secretary of state, treasurer, attorney-general, and commissioner of public lands and buildings shall, under the direction of the legislature, constitute a **board** of commissioners for the sale, leasing, and general **management** of all **lands** and funds set apart for **educational** purposes, and for the investment of school funds in such manner as may be prescribed by law.

SEC. 2. All lands, money, or other **property** granted, or bequeathed, or in any manner conveyed to this state for **educational** purposes, shall be **used** and expended in accordance with the terms of such grant, bequest, or conveyance.

SEC. 3. The following are hereby declared to be **perpetual funds** for common **school** purposes, of which the annual interest or income only can be appropriated, to-wit: *First.* Such per centum as has been, or may hereafter be granted by congress on the sale of lands in this state. *Second.* All moneys arising from the sale or leasing of sections number sixteen and thirty-six in each township in this state, and the lands selected, or that may be selected in lieu thereof. *Third.* The proceeds of all lands that have been, or may hereafter be granted to this state, where, by the terms and conditions of such grant, the same are not to be otherwise appropriated. *Fourth.* The net proceeds of lands and other property and effects that may come to the state, by escheat or forfeiture, or from unclaimed dividends, or distributive shares of the estates of deceased persons. *Fifth.* All moneys, stocks, bonds, lands, and other property now belonging to the common school fund.

SEC. 4. [**Temporary fund.**]—All other grants, gifts and devises that have been, or may hereafter be made to this state, and not otherwise appropriated by the terms of the grant, gift, or devise, the interest arising from all the funds mentioned in the preceding section, together with all the rents of the unsold school lands, and such other means as the legislature may provide, shall be exclusively applied to the support and maintenance of common schools in each school district in the state.

SEC. 5. All **fines, penalties,** and license moneys arising under the general laws of the state, shall belong and be paid over to the counties, respectively, where the same may be levied or imposed, and all fines, penalties, and license moneys arising under the rules, by-laws, or ordinance of cities, villages, towns, precincts, or other municipal sub-division less than a county, shall belong and be paid over to the same respectively. All such fines, penalties, and license moneys shall be appropriated exclusively to the use and support of common schools in the respective sub-divisions where the same may accrue.

Belong to school fund of the city. **8,** 162. **8,** 33. **9,** 404 (2 N. W. 877). All license moneys belong to the school fund. **17,** 219 (22 N. W. 458). Portions of several school districts within limits of village; *mandamus* ties to compel treasurer to distribute among them equally—money received for liquor licenses. **29**, 288. All fines, penalties and license money arising under the general laws of the state must be paid over to the counties respectively where the same is levied or imposed for the support of the common schools of such counties. **14**, 479 (16 N. W. 767). Where there are several school districts in a municipality license money shall be divided between them. **28**, 258 (44 N. W. 186). Money for liquor license issued by county board belongs to schools of whole county, not to district where liquors are sold. **29**, 350 (45 N. W. 694).

SEC. 6. The legislature shall provide for the **free** instruction in the common **schools** of this state of all persons between the ages of five and twenty-one years.

12, 359 (11 N. W. 855).

SEC. 7. Provisions shall be made by general law for an equitable **distribution of** the **income** of the fund set apart for the support of the common schools, among the several school districts of the state, and no appropriation shall be made from said fund to any district for the year in which school is not maintained at least three months.

Rents of unsold school lands shall be applied to support of common schools throughout the state, and not be vested in a permanent school fund. **5**, 104.

SEC. 8. University, agricultural college, common school, or other **lands,** which are now held, or may hereafter be acquired by the state **for educational purposes,** shall not be **sold** for less than seven dollars per acre, nor less than the appraised value.

SEC. 9. All **funds** belonging to the state **for educational purposes**, the interest and income whereof only are to be used, shall be deemed trust funds held by the state, and the state shall supply all losses thereof that may in any manner accrue, so that the same shall remain forever **inviolate** and undiminished; and shall not be invested or loaned except on United States or state securities, or registered county bonds of this state; and such funds, with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred to any other fund for other uses.

SEC. 10. The general government of the **university** of Nebraska shall, under the direction of the legislature, be vested in a board of six **regents,** to be styled the board of regents of the university of Nebraska, who shall be elected by the electors of the state at large, and their term of office, except those chosen at the first election, as hereinafter provided, shall be six years. Their duties and powers shall be prescribed by law; and they shall receive no compensation, but may be reimbursed their actual expenses incurred in the discharge of their duties.

Can only dispose of endowment fund as appropriated by legislature. **17**, 612 (24 N. W. 202).

SEC. 11. **No sectarian instruction** shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes; nor shall the state accept any grant, conveyance, or bequest of money, lands or other property, to be used for sectarian purposes.

SEC. 12. The legislature may provide by law for the establishment of a **school** or schools **for** the safe keeping, education, employment and **reformation** of all children under the age of sixteen years, who, for want of proper parental care, or other cause, are growing up in mendicancy, or crime.

ARTICLE IX.—REVENUE AND FINANCE.

SECTION 1. The legislature shall provide such revenue as may be needful, by levying a **tax** by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property and franchises, the value to be ascertained in such manner as the legislature shall direct, and it shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, innkeepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates.

Liquor license not a tax. **11**, 556 (10 N. W. 481). Tax must be by valuation. Board of equalization can not add fifty per cent to the assessed value of property. **5**, 564. Power of taxation not limited to the objects or classes enumerated. **4**, 539. Levy of land road tax at $4.00 per quarter section to be paid or worked out is valid. **4**, 505. Act of February 20, 1879, relating to the repayment of taxes levied on school lands, the legal title of which is in the state, is not in conflict with the constitution. **12,** 358 (11 N. W. 460, 542, 855). Section 17 of Revenue act of 1869, providing for taxation of the stock of corporations, was not in conflict with this section. **12,** 201 (10 N. W. 714). This does not prohibit the taxing of a jury fee against the defeated party. **17,** 834 (22 N. W. 772). Cities may impose occupation tax on insurance business. **25,** 85 (41 N. W. 140). See **10,** 68 (4 N. W. 968).

SEC. 2. The **property** of the state, counties and municipal corporations, both real and personal, shall be **exempt** from taxation, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation, but such exemptions shall be only by general law. In the assessment of all real estate encumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property. The legislature may provide that the increased value of lands, by reason of live fences, fruit and forest trees grown and cultivated thereon, shall not be taken into account in the assessment thereof.

Act exempting from taxation property to the value of $100.00 for every acre of fruit trees cultivated unconstitutional. **7,** 230.

SEC. 3. The right of **redemption from** all **sales** of real estate, **for** the non-payment of **taxes** or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate for a period of not less than two years from such sales thereof; *Provided,* That occupants shall in all cases be served with personal notice before the time of redemption expires.

Where party redeems and pays penalty without the prescribed notice, such redemption is voluntary, and he cannot recover penalty. **14,** 45 (14 N. W. 537). Notice not necessary before bringing suit to enforce lien. **20,** 345 (30 N. W. 251).

SEC. 4. The legislature shall have **no** power to **release** or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or any corporation, or the property therein, **from** their or its proportionate share of **taxes** to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever.

Legislature cannot authorize sale of tax certificates for less than amount due thereon if land will bring it. **17,** 45 (22 N. W. 114). See **10,** 68 (4 N. W. 968).

SEC. 5. **County** authorities shall never assess **taxes** the aggregate of which shall exceed one and a half dollars per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

County board cannot include in their estimate or levy taxes in excess of amount fixed by law, to pay such warrants as were not paid out of former levies. **14,** 23 (14 N. W. 801). See **12,** 256 (11 N. W. 307); **27,** 786 (43 N. W. 1143).

SEC. 6. The legislature may vest the corporate authorities of cities, towns, and villages, with power to make local improvements by special assessment, or by special **taxation** of property benefitted. For all other corporate purposes, all **municipal corporations** may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

Does not prevent legislature from conferring the same power on other corporations not named. **8,** 134. **8,** 127. Special assessments can only be levied upon property specially benefitted and only to the extent of the benefits. **11,** 37 (7 N. W. 739). A statute authorizing the levy of an assessment for the purpose of grading streets, a part to be collected abutting thereon, is valid. **4,** 346. Certain taxes held in conflict with and void. **11,** 80 (7 N. W. 861). See **22,** 468 (35 N. W. 228); **27,** 439 (43 N. W. 257).

SEC. 7. Private **property** shall **not** be **liable** to be taken or sold for the payment of the corporate debts of municipal corporations. The legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes.

SEC. 8. The legislature at its first session shall provide by law for the **funding** of all outstanding warrants and other **indebtedness** of the state, at a rate of interest not exceeding eight per cent per annum.

Intended to provide for the payment of existing state indebtedness. **6,** 513.

SEC. 9. The legislature shall provide by law that all **claims upon** the **treasury** shall be examined and adjusted by the auditor and approved by the secretary of state before any warrant for the amount allowed shall be drawn; *Provided,* That a party aggrieved by the decision of the auditor and secretary of state may appeal to district court.

Applies to all claims on treasurer whether made on specific appropriations or not. **22,** 44 (33 N. W. 711). See note to Sec. 22, Art. III., citing **14,** 444 (16 N. W. 481).

ARTICLE X.—COUNTIES.

SECTION 1. No new **county** shall be formed or established by the legislature which will reduce the county or counties, or either of them, to a less **area** than four hundred square miles, nor shall any county be formed of a less area.

SEC. 2. No **county** shall be **divided,** or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

SEC. 3. There shall be no **territory stricken from** any **organized county** unless a majority of the voters living in such territory shall petition for such division, and no territory shall be added to any organized county without the consent of the majority of the voters of the county to which it is proposed to be added; but the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the counties from which it has been taken.

SEC. 4. The legislature shall provide by law for the **election** of such county and township officers as may be necessary.

SEC. 5. The legislature shall provide by general law for **township organization,** under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine; and in any county that shall have adopted a township organization, the question of continuing the same may be submitted to a vote of the electors of such county at a general election in the manner that shall be provided by law.

To adopt township organization requires a majority of all the legal voters voting at such election. **6,** 483.

ARTICLE XI.—RAILROAD CORPORATIONS.

SECTION 1. Every railroad corporation organized or doing business in this state, under the laws or authority thereof, or of any other state, or of the United States, shall have and maintain a **public office** or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the amount of stock paid in and by whom, the transfers of said stock, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad corporation, or other parties having control of its road, shall annually make a report under oath, to the auditor of public accounts, or some officer to be designated by law, of the amount received from passengers and freight, and such other matters relating to railroads as may be prescribed by law. And the legislature shall pass laws enforcing by suitable penalties the provisions of this section.

SEC. 2. The rolling stock and all other **movable property** belonging to any railroad company or corporation in this state shall be liable to **execution** and **sale** in the same manner as the personal property of individuals, and the legislature shall pass no law exempting any such property from execution and sale.

SEC. 3. **No** railroad corporation or telegraph company shall consolidate its **stock,** property, franchises, or earnings, in whole or in part, with any other railroad corporation or telegraph company owning a parallel or competing line; and in no case shall any **consolidation** take place except upon public notice of at least sixty days to all stockholders in such manner as may be provided by law.

"Consolidate" used in sense of "join" or "unite;" prohibition extends to leasing. **24,** 164 (38 N. W. 43).

SEC. 4. **Railways** heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the legislature may from time to time pass laws establishing reasonable maximum **rates of charges** for the transportation of passengers and freight on the different railroads in this state. The **liability** of railroad corporations as common carriers shall never be limited.

SEC. 5. **No** railroad corporation shall issue any stock or bonds, except for money, labor, or property actually received and applied to the purposes for which such corporation was created, and all stock, dividends, and other **fictitious increase of** the capital **stock** or indebtedness of any such corporation shall be void. The capital stock of railroad corporations shall not be increased for any purpose, except after public notice for sixty days, in such manner as may be provided by law.

Applies not simply to stockholders; intended to restrict issue of stock to actual consideration. **24**, 165 (38 N. W. 43).

SEC. 6. The exercise of the **power** and the right of **eminent domain** shall never be so construed or abridged as to prevent the taking, by the legislature of the property and franchises of incorporated companies already organized or hereafter to be organized, and subjecting them to the public necessity, the same as of individuals.

SEC. 7. The legislature shall pass **laws to** correct abuses, and **prevent** unjust discrimination and **extortion** in all charges of express, telegraph and railroad companies in this state, and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

SEC. 8. No **railroad** corporation, organized under the laws of any other state, or of the United States, and doing business in this state, shall be entitled to exercise the right of **eminent domain,** or have power to acquire the right of way, or real estate for depot or other uses, until it shall have become a body corporate pursuant to and in accordance with the laws of this state.

Foreign corporations cannot exercise the right. **22**, 643 (36 N. W. 121); **27**, 704 (43 N. W. 423). Foreign corporation may consolidate with domestic and exercise the powers of eminent domain. **25**, 161 (41 N. W. 125). See **23**, 243 (36 N. W. 502).

*ARTICLE XII.—MUNICIPAL CORPORATIONS.

SECTION 1. **No** city, county, town, precinct, **municipality,** or other subdivision of the state, shall ever become a subscriber to the capital stock, or **owner of** such **stock,** or any portion or interest therein, of any railroad or private corporation, or association.

*ARTICLE XIII.—MISCELLANEOUS CORPORATIONS.

SECTION 1. **No corporation** shall be created **by special law,** nor its charter extended, changed, or amended, except those for charitable, educational, penal, or reformatory purposes, which are to be and remain under the patronage and control of the state, but the legislature shall provide by general laws for the organization of all corporations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time, or repealed.

Special law authorizing school district to vote bonds invalid. **8**, 179. Special law authorizing county to vote court house bonds invalid. **8**, 519.

SEC. 2. No such general law shall be passed by the legislature granting the right to construct and operate a **street railroad** within any city, town, or incorporated village, without first requiring the consent of a majority of the electors thereof.

Majority of all votes cast give the required consent. **22**, 162 (34 N. W. 342).

SEC. 3. All corporations may **sue** and **be sued** in like cases as natural persons.

SEC. 4. In all cases of **claims** against corporations and joint stock associations, the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted, the original **subscribers** thereof shall be individually **liable** to the extent of their unpaid subscription, and the liability for the unpaid subscription shall follow the stock.

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*In the compiled statutes articles XII. and XIII. are consolidated with XI. This accounts for the discrepancy in numbering (of articles following XI.) between that compilation and the present one. In the original rolls none of the articles are numbered, but XII. and XIII. are as distinct as the others.

Liability of stockholders limited to a compliance with the laws governing such corporation. **8**, 118.

SEC. 5. The legislature shall provide by law that in all **elections** for directors or managers of incorporated companies, every stockholder shall [have] the right to vote in person or proxy for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many **votes** as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them upon the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

SEC. 6. All **existing charters** or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not be in operation within sixty days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

SEC. 7. Every **stockholder** in a **banking corporation** or institution shall be individually responsible and **liable** to its creditors, over and above the amount of stock by him held, to an amount equal to his respective stock or shares so held, for all its liabilities accruing while he remain such stockholder; and all banking corporations shall publish quarterly statements, under oath, of their assets and liabilities.

ARTICLE XIV.—STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS.

SECTION 1. The **state** may, to meet casual deficits or failures in the revenues, contract **debts** never to exceed in the aggregate one hundred thousand dollars; and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war; and provision shall be made for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid.

See **22**, 468 (35 N. W. 228).

SEC. 2. No city, county, town, precinct, **municipality,** or other subdivision of the state, shall ever make **donations** to any railroad or other works of internal improvement, unless a proposition so to do shall have been first submitted to the qualified electors thereof at an election by authority of law; *Provided,* That such donations of a county with the donations of such subdivisions in the aggregate shall not exceed ten per cent of the assessed valuation of such county; *Provided further,* That any city or county may, by a two-thirds vote, increase such indebtedness five per cent, in addition to such ten per cent, and no bonds or evidences of indebtedness so issued shall be valid unless the same shall have endorsed thereon a certificate signed by the secretary and auditor of state, showing that the same is issued pursuant to law.

Limitation upon county indebtedness relates solely to such as is created to aid in construction of works of internal improvement. Bridges built by county and wholly within it, are not works of internal improvement. **12**, 185 (10 N. W. 697). In arriving at the sum which the county had already donated in order to see what it might still donate, the items of unpaid interest on former donations must be rejected. **13**, 130 (13 N. W. 5). Donations to one railroad *or* another, held invalid. **13**, 133, 136 (13 N. W. 5); **14**, 294 (15 N. W. 701). Aid not exceeding ten per cent of total valuation may be given by a two-thirds vote. **7**, 314. Does not prohibit precincts from voting bonds in excess of the limit fixed by the county. **6**, 215. Without certificate bonds void. **22**, 125 (34 N. W. 108).

SEC. 3. The **credit of** the **state** shall never be given or loaned in aid of any individual, association or corporation.

ARTICLE XV.—MILITIA.

SECTION 1. The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same.

ARTICLE XVI.—MISCELLANEOUS PROVISIONS.

SECTION 1. Executive and judicial **officers** and members of the legislature. before they enter upon their official duties, shall take and subscribe the following **oath** or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of Nebraska, and will faithfully discharge the duties of———according to the best of my ability, and that at the election at which I was chosen to fill said office I have not improperly influenced in any way the vote of any elector, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, or any promise of office for any official act or influence (for any vote I may give or withhold on any bill, resolution or appropriation)." Any such officer or member of the legislature who shall refuse to take the oath herein prescribed, shall forfeit his office, and any person who shall be convicted of having sworn falsely to, or of violating his said oath, shall forfeit his office, and thereafter be disqualified from holding any office of profit or trust in this state, unless he shall have been restored to civil rights.

SEC. 2. Any **person** who is in default as collector and custodian of public money or property, shall **not** be **eligible** to any office of trust or profit under the constitution or laws of this state; nor shall any person convicted of felony be eligible to office unless he shall have been restored to civil rights.

SEC. 3. **Drunkenness** shall be cause of **impeachment** and removal from office.

ARTICLE XVII.—AMENDMENTS.

SECTION 1. Either branch of the legislature may **propose** amendments to this constitution, and if the same be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and published at least once each week in at least one newspaper in each county, where a newspaper is published, for three months immediately preceding the next election of senators and representatives, at which election the same shall be **submitted** to the electors for approval or rejection, and if a majority of the electors voting at such election **adopt** such amendments, the same shall become a part of this constitution. When more than one amendment is submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately.

Requires a majority of all votes cast for legislative ticket. **17,** 188 (22 N. W. 372). Form of submitting may be dual. **25,** 864 (41 N. W. 981).

SEC. 2. When three-fifths of the members elected to each branch of the legislature deem it necessary to call a **convention to revise,** amend, or change this constitution, they shall recommend to the electors to vote at the next election of members of the legislature for or against a convention; and if a majority voting at said election vote for a convention, the legislature shall, at its next session, provide by law for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose aforesaid. No amendment or change of this constitution, agreed upon by such convention, shall take effect until the same has been submitted to the electors of the state, and adopted by a majority of those voting for and against the same.

ARTICLE XVIII.—SCHEDULE.

SECTION 1. [**Vested rights confirmed.**]—That no inconvenience may arise from the revisions and changes made in the constitution of this state, and to carry the same into effect, it is hereby ordained and declared that all laws in force at the time of the adoption of this constitution, not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts of this state, individuals, or bodies corporate, shall continue to be as valid as if this constitution had not been adopted.

Court may amend docket entry in a term case. **24,** 701 (40 N. W. 137). See **4,** 536; **6,** 302.

SEC. 2. All **fines, taxes,** penalties, and forfeitures owing to the state of Nebraska, or to the people thereof, under the present constitution and laws, shall inure to the use of the people of the state of Nebraska under this constitution.

SEC. 3. Recognizances, bonds, **obligations,** and all other instruments entered into or executed upon the adoption of this constitution, to the people of the state of Nebraska, to the state of Nebraska, to any state or county officer, or public body, shall remain **binding** and valid, and rights and liabilities upon the same shall continue; and all **crimes** and misdemeanors shall be tried and **punished** as though no change had been made in the constitution of this state.

SEC. 4. All **existing courts** which are not in this constitution specifically enumerated, and concerning which no other provision is herein made, shall **continue** in existence, and exercise their present jurisdiction until otherwise provided by law.

Judicial functions of notary public continued. **21,** 280 (81 N. W. 929).

SEC. 5. All **persons** now **filling** any **office** or appointment, shall **continue** in the exercise of the duties thereof, according to their respective commissions, elections, or appointments, unless by this constitution it is otherwise directed.

See **7,** 48.

SEC. 6. The **district attorneys** now in office shall **continue** during their unexpired terms to hold and exercise the duties of their respective offices in the judicial districts herein created, in which they severally reside. In each of the remaining districts one such officer shall be elected at the first general election, and hold his office until the expiration of the terms of those now in office.

SEC. 7. This **constitution** shall be **submitted** to the people of the state of Nebraska, for adoption or rejection, at an election to be held on the second Tuesday of October, A.D., 1875, and there shall be separately submitted at the same time, for adoption or rejection, the independent article relating to "Seat of government," and the independent article "Allowing electors to express their preference for United States senator."

SEC. 8. At said **election** the qualified electors shall vote at the usual places of voting, and the said election shall be conducted and the returns thereof made according to the laws now in force regulating general elections, except as herein otherwise provided.

SEC. 9. The **secretary of state** shall, at least twenty days before said election, cause to be delivered to the county clerk of each county blank poll-books, tally lists, and forms of return, and twice as many of properly prepared printed ballots for the said election as there are voters in such county, the expense whereof shall be audited and paid as other public printing ordered by the secretary as is by law required to be audited and paid; and the several **county clerks** shall, at least five days before said election, cause to be distributed to the judges of election, in each election precinct in their respective counties, said blank poll-books, tally lists, forms of return, and tickets.

SEC. 10. At the said election the **ballots** shall be of the following **form**: For the new constitution. Against the new constitution. For the article relating to "Seat of government." Against the article relating to "Seat of government." For the article "Allowing electors to express their preference for United States senators." Against the article "Allowing the electors to express their preference for United States senators."

SEC. 11. The **returns** of the whole vote cast, and of the votes for the adoption or rejection of this constitution, and for or against the articles respectfully submitted shall be made by the several county clerks to the secretary of state within fourteen days after the election, and the returns of the said vote, shall, within three days thereafter, be examined and canvassed by the president of this convention, the secretary of state, and the governor, or any two of them, and **proclamation** shall be made forthwith by the governor, or the president of this convention, of the result of the canvass.

SEC. 12. [**Result.**]—If it shall appear that a majority of the votes polled are "for the new constitution," then so much of this new constitution as was not separately submitted to be voted on by article shall be the supreme law of the state of Nebraska, on and after the first day of November, A.D. 1875. But if it shall appear that a majority of the votes polled were "against the new constitution," the whole thereof, including the articles separately submitted, shall be null and void. If the votes "for the new constitution" shall adopt the same, and it shall appear that a majority of the votes polled are for the article relating to "the seat of government," said article shall be a part of the constitution of this state. If the votes "for the new constitution" shall adopt the same and it shall appear that the majority of the votes polled are for the article "allowing electors to express their preference for United States senator," said article shall be a part of the constitution of this state.

SEC. 13. The **general election** of this state shall be held on the Tuesday succeeding the first Monday of November of each year, except the first general election, which shall be on the second Tuesday in October, 1875. All state, district, county, precinct, and township officers, by the constitution or laws made elective by the people, except school district officers, and municipal officers in cities, villages, and towns, shall be elected at a general election to be held as aforesaid. Judges of the supreme, district, and county courts, all elective county and precinct officers, and all other elective officers, the time for the election of whom is not herein otherwise provided for, and which are not included in the above exception, shall be elected at the first general election, and thereafter at the general election next preceding the time of the termination of their respective terms of office; *Provided*, That the office of no county commissioner shall be vacated hereby.

SEC. 14. The **terms** of office of all state and county officers, or judges of the supreme, district, and county courts, and regents of the university shall **begin** on the first Thursday after the first Tuesday in January next succeeding their election. The present state and county officers, members of the legislature, and regents of the university, shall continue in office until their successors shall be elected and qualified.

Not applicable to physicians of penitentiary. 7, 49.

SEC. 15. The supreme, district, and county **courts** established by this constitution shall be the **successors** respectively of the supreme court, the district courts, and the probate courts, having jurisdiction under the existing constitution.

SEC. 16. The supreme, district, and probate **courts** now in existence shall **continue,** and the judges thereof shall exercise the power and retain their present jurisdiction until the courts provided for by this constitution shall be organized.

SEC. 17. All **cases,** matters and proceedings, **pending** and undetermined in the several courts, and all records, judgments, orders, and decrees remaining therein, are hereby **transferred** to and shall be proceeded and enforced in and by the successors thereof respectively.

SEC. 18. If this **constitution** be adopted, the **existing** constitution shall **cease** in all its provisions on the first day of November, A.D. 1875.

Old constitution ceased on the adoption of the new. 7, 273.

SEC. 19. The provisions of this **constitution** required to be executed prior to the adoption or rejection thereof, shall **take effect** and be in force immediately.

SEC. 20. The **legislature** shall pass all laws necessary to **carry into effect** the provisions of this constitution.

SEC. 21. On the taking effect of this constitution, all state **officers** hereby continued in office shall, before proceeding in the further discharge of their duties take an **oath** or affirmation **to support** this constitution.

SEC. 22. The **regents** of the university shall be elected at the first general election under this constitution, and be **classified** by lot so that two shall hold their offices for the term of two years, two for the term of four years, and two for the term of six years.

SEC. 23. The **present** executive state **officers** shall **continue** in office until the executive state officers provided for in this constitution shall be elected and qualified.

SEC. 24. The **returns** of the whole vote cast for the judges of the supreme and district courts, district attorneys, and regents of the university, under the first general election, shall be made by the several county clerks to the secretary of state within fourteen days after the election; and the returns of the said votes shall within three days thereafter, be examined and canvassed by the governor, secretary of state, and the president of this convention. or any two of them, and **certificates of election** shall forthwith be issued by the secretary of state to the persons found to be elected.

SEC. 25. The auditor shall draw the warrants of the state **quarterly** for the payment of the **salaries** of all officers under this constitution, whose compensation is not otherwise provided for, which shall be paid out of any funds not otherwise appropriated.

Salaries may be paid out of the treasury when no fund otherwise provided. **4**, 218. See **6**, 16.

SEC. 26. Until otherwise provided by law, the judges of the district courts shall fix the **time of holding courts** in their respective districts.

A continuing power not exhausted by user. **8**, 483.

SEC. 27. The members of the **first legislature** under this constitution shall be **elected** in the year 1876.

SEC. 28. This **constitution** shall be **enrolled** and deposited in the office of the secretary of state, and printed copies thereof shall be prefixed to the books containing the laws of the state, and all future editions thereof.

PROPOSITIONS SEPARATELY SUBMITTED AND ADOPTED.

ALLOWING ELECTORS TO EXPRESS THEIR PREFERENCE FOR UNITED STATES SENATOR.

The legislature may provide that at the general election immediately preceding the expiration of a term of a United States senator from this state, the electors may, by ballot, express their preference for some person for the office of United States senator. The votes cast for such candidates shall be canvassed and returned in the same manner as for state officers.

SEAT OF GOVERNMENT.

The seat of government of the state shall not be removed or re-located without the assent of a majority of the electors of the state, voting thereupon at a general election or elections, under such rules and regulations as to the number of elections and manner of voting, and places to be voted for, as may be prescribed by law; *Provided*, The question of removal may be submitted at such other general elections as may be provided by law.

Done in convention at the capitol, in the city of Lincoln, on the twelfth day of June, in the year of our Lord, one thousand eight hundred and seventy-five, and of the independence of the United States of America, the ninety-ninth.

In witness whereof, we have hereunto subscribed our names.

JOHN LEE WEBSTER, President.

O. A. ABBOTT,
LUKE AGUR,
J. P. BECKER,
J. E. BOYD,
CLINTON BRIGGS,
JEFFERSON H. BROADY,
JAMES W. DAWES,
J. E. DOOM,
W. L. DUNLAP,
R. C. ELDRIDGE,
J. G. EWAN,
S. R. FOSS,

CHARLES H. BROWN,
S. F. BURTCH,
S. H. CALHOUN,
E. C. CARNS,
T. S. CLARK,
S. H. COATS,
A. H. CONNER,
W. B. CUMMINS,
JAMES HARPER,
ROBT. B. HARRINGTON,
J. B. HAWLEY,
M. L. HAYWARD,
D. P. HENRY,
B. I. HINMAN,
M. R. HOPEWELL,
C. E. HUNTER,
A. G. KENDALL,
S. M. KIRKPATRICK,
JAMES LAIRD,
CHAS. F. MANDERSON,
FRANK MARTIN,
A. W. MATTHEWS,
SAMUEL MAXWELL,
JOHN McPHERSON,
W. H. MUNGER,
J. H. PERRY,
C. W. PIERCE,
S. B. POUND,
C. H. FRADY,
JOSEPH GARBER,
C. H. GERE,
HENRY GREBE,
EDWIN N. GRENELL,
GEORGE L. GRIFFING,
WILLIAM A. GWYER,
ANDREW HALLNER,
J. D. HAMILTON,
ISAAC POWERS, JR.,
M. B. REES,
W. M. ROBERTSON,
JOSHUA ROGERS,
J. H. SAULS,
H. H. SHEDD,
GEO. S. SMITH,
W. H. STERNS,
R. F. STEVENSON,
JOHN J. THOMPSON,
L. B. THORNE,
JACOB VALLERY, SR.,
C. H. VAN WYCK,
CHARLES F. WALTHER,
A. M. WALLING,
T. L. WARRINGTON,
A. J. WEAVER,
M. W. WILCOX,
J. F. ZEDIKER.

ATTEST:
GUY A. BROWN, Secretary.
C. L. MATHER, Assistant Secretary.

PROPOSED AMENDMENTS TO THE CONSTITUTION.

[To be voted upon at general election, 1892.]

Resolved, That section one (1) of article five (5) of the constitution of the state of Nebraska, the senate concurring, be so amended as to read as follows:

SECTION 1. [Officers.]—The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, attorney general, commissioner of public lands and buildings, and three railroad commissioners, whose powers and duties shall be such as may be prescribed by law.

The first named eight (8) officers shall hold office for the term of two years from the first Thursday after the first Tuesday in January next after his election, and until his successor is elected and qualified; *Provided, however*, That the first election of said first eight named officers, shall be held on the Tuesday succeeding the first Monday in November, 1892, and each succeeding election shall be held at the same relative time in each even year thereafter. The three last named officers or railroad commissioners shall be elected by the electors of the state at large, and their terms of office, except of those chosen at the first election as hereinafter provided shall be three years. The first election for railroad commissioners shall be held on the Tuesday succeeding the first Monday in November, 1893, and shall be held at the same relative time in each succeeding year. The railroad commissioners shall, immediately after the first said election in 1893, be classified by lot, so that one shall hold his office for the term of one year, one for the term of two years, and one for the term of three years. No person shall be eligible to the office of railroad commissioner who be* in the employ of any common carrier, or the owner of any railroad bonds or stock, or in any manner whatever pecuniarily interested in any railroad company. The governor, secretary of the state,* railroad commissioners, auditor of public accounts, and treasurer, shall reside at the seat of government, during their term of office, and keep the public records, books, and papers there, and shall perform such duties as may be required by law; *Provided, however, also*, That the governor shall appoint three railroad commissioners, who shall hold their office until their successors are elected and qualified as provided hereinbefore.

SECTION 2. That each person voting in favor of this amendment, shall have written or printed upon his ballot the following:

"For the proposed amendment to the constitution relating to executive officers."

Approved April 4, 1891.

A joint resolution to submit to the electors of the state of Nebraska for their approval or rejection, an amendment to the constitution of the state, providing for the investment of the Permanent Educational Fund of this state.

Resolved, By the legislature of the state of Nebraska, that at the general election eighteen hundred ninety-two (1892), there shall be submitted to the electors of the state for their approval or rejection, an amendment to the constitution of the state, in words as follows:

SECTION 1. "All funds belonging to the state for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the state, and the state shall supply all losses thereof that may in any manner accrue, so that the same shall remain forever inviolate and undiminished, and shall not be invested or loaned except on United States or state securities, or registered county bonds, or registered school district bonds of this state; and such funds with the interest and income thereof are hereby solemnly pledged for the purposes for which they are granted and set apart and shall not be transferred to any other fund for other uses."

SEC. 2. At such election on the ballot of each elector voting for or against this proposed amendment shall be written or printed the words: "For proposed amendment to the constitution relating to permanent school fund," and "Against said proposed amendment to the constitution, relating to permanent school fund."

SEC. 3. If such amendment shall be approved by a majority of all the electors voting at such election, said proposed amendment shall constitute section nine (9), of article eight (8) of the constitution of the state of Nebraska.

Approved April 6, 1891.

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*So in original.

PART II.

THE GENERAL LAWS

OF THE

STATE OF NEBRASKA.

CHAPTER 1.—AGRICULTURE.

Secs. 1 to 27, except secs. 11 to 19. "An act for the government and maintenance of the state board of agriculture and state historical society." 1879, p. 396. In force June 1. Repealing secs. 2-11, R. S., p. 4, and subsequent acts.

1. There shall be held at the capital of the state, on the third Tuesday in January of each year, a meeting of the **state board of agriculture**, together with the president of each county society, or delegate therefrom duly authorized, who shall for the time being be *ex-officio* members of the state board of agriculture, for the purpose of deliberating and consulting as to the wants, prospects, and condition of the agricultural interests throughout the state. And at such **annual meeting** the several reports from the subordinate societies shall be delivered to the president of the state board; and the said president and delegates shall at this meeting elect suitable persons to fill all vacancies in the state board. The said president shall also have power to call meetings of the board whenever he may deem it expedient. *The said board shall also have power at the annual meeting to locate the state fair for a period not exceeding five years at any one time or at any one place.

All after * added 1883, p. 57.

2. The **officers** of the board shall consist of a president, vice-president, secretary, and treasurer, and such others as the board may deem necessary. They shall be elected at the annual meeting of the board, and shall hold their offices for the period of one year, and until their successors are elected and qualified. The board shall determine by lot the time that each member shall serve, so that the term of service of one-half of the members shall expire annually on the day of the annual meeting.

3. It shall be the duty of the said board to make an **annual report** to the governor, embracing the proceedings of the society, with a bill of items showing what moneys have been received and paid out for the past year, giving a general view of the condition of agriculture throughout the state, and such other recommendations as they may deem important and useful. The sum of two thousand (2,000) dollars shall be paid annually out of the state treasury, which shall be used in the **payment of premiums** awarded by said board in the various branches of agriculture; and the state auditor is hereby authorized to draw his warrant for said amount upon the receipt of the proper voucher therefor, certified to by the president and secretary of said board; *Provided*, That should the board fail in any year to offer and award premiums as aforesaid, then the benefit of this section shall not be available that year.

4. The **report** of the board, or so much thereof as will not exceed *four hundred pages of printed matter, to be designated by the president and secretary, shall be **printed** annually by the state printer and * 5,000 copies thereof bound in cloth covers and delivered to the secretary of the state, the accounts thereof to be audited as other accounts for state printing are audited, and paid out of any money appropriated for legislative printing.

* Changed from 200 and 2,000 respectively. 1887, p. 67.

5. The secretary of state shall **distribute** said **reports** as follows: Five copies thereof to each member of the legislature and to each state officer, one copy by mail to each county clerk, to be by them preserved as one of the public records of the county; one copy by mail to each state and territorial library, the library of congress, the senate library, the library of the house of representatives, and the library of the agricultural department of the United States; one copy to each public library in the state; one hundred copies to the state library; and the balance to the secretary of the state board of agriculture, to be by him distributed as the board may direct.

6. The **state horticultural society** shall **meet** at the capital of the state on the first Tuesday after the second Monday in January of **each year** for the purpose of deliberating and consulting as to the wants, conditions, and prospects of the horticultural interests of the state.

Amended 1887, p. 67.

7. The **officers** of the state horticultural society shall correspond in numbers and titles to those of the state board of agriculture, and shall be elected at said annual meeting for like periods of time.

8. [**Duties.**]—Such society shall encourage the organization of district and county societies and give them representation therein, and in every proper way further the fruit and tree growing interests of the state.

9. The secretary of said horticultural society shall make an **annual report** to the governor, embracing the proceedings of the society, with a bill of items, showing for what purpose any money appropriated was paid out for the past year, the general condition of horticultural interests throughout the state, together with the essays, statements of facts, and recommendations as he may deem useful, which report, not exceeding three hundred pages of printed matter, shall be printed annually by the state printer, and not to exceed 5,000 copies thereof be bound in cloth covers and delivered to the secretary of the state, the accounts thereof to be audited as other accounts for state printing are audited and paid out of any money appropriated for legislative printing.

Amended 1887, p. 68.

10. The **sum** of one thousand dollars shall be **paid** out of the state treasury annually **for** the use and benefit of said society, and the state auditor is hereby authorized to draw his warrant for the same upon vouchers therefor, certified to by the president and secretary of said society, said amount to be used in the payment of **premiums** awarded by such board in the various branches of horticulture.

11. If any of the officers named and designated as the custodian of the **appropriation** hereby made shall convert the same to his own use, or suffer the same to be lost or expended in any other way or manner than that designated by law, such officers or persons shall be deemed guilty of **embezzlement** and after conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year.

This section formed sec. 5, p. 12, Laws 1872.

Secs. 12 to 18. "An act to establish experimental stations at Culbertson and Ogalalla, Neb., and fixing the control and management of the same." 1891, p. 66. In force April 7.

12. That for the furtherance and promotion of the agricultural and horticultural interests of this state, two (2) **experimental stations** shall be established, one at or near Culbertson, Hitchcock county, Nebraska, and one at or near Ogalalla, Keith county, Nebraska, which stations shall be under the control and management of the state board of agriculture.

13. The **state board** of agriculture is hereby authorized and empowered **to select** the necessary **lands** and to secure the same, either by lease or purchase, as in their judgment appears advisable, and to **make** all necessary **improvements** in the way of buildings, fences, etc., and to take all such steps as they deem necessary to successfully establish such stations.

14. The state board of agriculture shall have the control and **supervision of** said stations. They shall appoint skillful superintendents and such other officers and employes as to them may appear necessary to obtain the best results. They shall fix the salaries and compensation of the employes and establish such rules and regulations as they may from time to time deem best. They shall select three (3) resident trustees for each station, who shall serve without compensation, except as it becomes necessary to pay traveling expenses as may be required.

15. The **object** of these experimental stations shall be to determine the adaptability of the state of Nebraska to agriculture and horticulture, such as the producing of grain, grasses, root crops, and fruits of all kinds that are produced in the same latitude in other states; also the most economical methods of producing the best results in growing such crops, both with and without irrigation; also to determine the most successful methods of applying water by artificial means to the lands of the state of Nebraska.

16. The state board of agriculture may in their discretion establish **substations,** not to exceed four (4) for any one year, to determine the effect of irrigation on the different kinds of soil in said state.

17. The **proceeds** arising from the sale of products of said stations shall be **applied** to the liquidation of the running expenses, and all money so accruing shall be credited as coming from the state, and be applied as part or whole payment of any amount which may be appropriated from the funds of the state for the maintenance of said station.

18. To enable the **state board** of agriculture to carry out the provisions of this act they are hereby authorized to **expend** such amounts as they may deem necessary from any moneys hereafter appropriated to carry out the spirit and intent of this bill, either by the state or the United States, as the case might be.

19. Whenever twenty or more persons residents of any **county** in this state shall organize themselves into a **society** for the improvement of agriculture within said county, and shall have adopted a constitution and by-laws agreeable to the rules and regulations furnished by the state board of agriculture, and shall have appointed the usual and proper officers, and when the said society shall have raised and paid into the treasury, by voluntary subscription or by fees imposed upon its members, any sum of money, in each year not less than fifty ($50) dollars, and whenever the president of such society shall certify to the county clerk the amount thus paid, it shall be the duty of the county board of said county to order a warrant drawn on the general fund of said county in favor of the president of said society for a **sum** equal to three cents on each inhabitant of said county upon a basis of the last vote for member of congress, allowing five inhabitants for each vote thus cast, and it shall be the duty of the county board of said county to include this three (3) cents per

capita in their annual estimate, and it shall be the duty of the treasurer of the county to pay the same out of the general fund; *Provided*, That if any existing county agricultural society fails or has failed for two years or more to hold an annual fair of at least three days duration, then any agricultural society in the county formed for a similar purpose, and governed by the rules of this chapter and who shall hold an annual fair of at least three days duration, may apply for and shall receive from the county treasurer the amount above **provided** to be paid, to which amount they shall be entitled for so long a period as they may comply with the conditions of this act.

This section formed sec. 1 p. 3, R. S. Amended 1869, p. 217; 1881, p. 63; 1889, p. 534.

20. All **county** agricultural **societies** organized pursuant to law shall annually offer and award **premiums** for the improvement of soil, crops, tillage, manures, implements, stock, articles of domestic industry, and such other articles, productions, and improvements as they may deem proper, and perform all such acts as they may deem best calculated to promote the agricultural and manufacturing interests of the county and state. And it shall also be their duty so to regulate the amount of premiums and the different grades of the same as to enable farmers of small as well as large means to compete therefor; and in making the awards special reference shall be had to the profits which may accrue or be likely to accrue from improved methods of raising crops, or of the fabrication of the articles thus offered, with the intention that the premiums shall be given for the most economical mode of improvement. All persons offering to compete for premiums on improved mode of tillage, or the production of any crops or other articles, shall be required, before such premiums are adjudged, to deliver to the awarding committee a full and correct statement of the process of such mode of tillage or production, and the expense and value of the same, with a view of showing accurately the profits derived or expected to be derived therefrom.

21. It shall be the duty of each county society to **publish** annually a list of the **awards**, and an abstract of the treasurer's **account**, in such manner as the society may direct, and to make a **report** of their proceedings during the year, and a synopsis of the awards for the improvements in agriculture and manufactures, together with an abstract of the several descriptions of these improvements; and also to make a report of the condition of agriculture in that county; which report shall be made out in accordance with the rules and regulations of the state board of agriculture, and shall be forwarded to the state board at their annual meeting.

22. **[Fair grounds.]**—Each county society may purchase and hold in fee simple such real estate as they may deem necessary, not exceeding 160 acres of land, for the purpose of holding county fairs.

23. Whenever any **county** agricultural society, organized by law, shall have procured in fee simple, free from incumbrance, land for fair grounds not less than ten acres in extent, the county board of said county **may**, in their discretion, if the finances of the county will admit, **appropriate** and pay to such society a sum not exceeding one hundred dollars for every thousand inhabitants in said county, to be expended by such society in fitting up such fair grounds, but for no other purpose; but not more than one thousand dollars shall in the aggregate be appropriated in any one county.

24. Each **society** receiving such appropriation shall, through its secretary, make to the county board a detailed **statement**, with vouchers showing the legal disbursement of all the moneys received. And in all cases, when such county agricultural societies shall be **dissolved**, or neglect, for the space of two years, to discharge the duties devolving upon them by law, or cease to exist, in any county

where payments have been made for real estate, or improvements upon such real estate for the use of any agricultural society, then all such real estate and improvements shall vest in fee simple in the county making such payment, and the district court of said county, upon proof thereof, shall, upon petition of said county board, make a proper decree vesting the title to such property in said county.

25. **No** person shall be permitted to sell intoxicating **liquors,** wine, or beer of any kind, or be engaged in any gambling, or other **game of chance,** or horse-racing, either inside the enclosure where any state, district, or county agricultural society fair is being held or within forty rods thereof, during the time of holding such fair; and any person found guilty of any of the offenses herein enumerated, shall be fined in a sum not less than five nor more than fifty dollars for every such offense; *Provided,* That trials of speed of horses under direction of the society shall not be included in the term horse-racing; *Provided, also,* That upon filing proof with the state treasurer of a violation of this section inside the enclosure of any such fair, the amount of money appropriated shall be withheld for the current year, except, if paid, then it shall be withheld from any money appropriated for the ensuing year.

26. The president of any state or county agricultural society may grant a written **permit** to such persons as he may deem necessary **to sell** fruit, **provisions,** and other necessaries to such persons as may be in attendance at any such fair, under such regulations and restrictions as the board of directors may prescribe.

27. The president of any such society, marshal, or any police officer appointed by the board shall be empowered to **arrest,** or cause to be arrested, any person or **persons** engaged in **violating** any of the provisions contained in section 16 [25] of this chapter, and cause them forthwith to be taken before some justice of the peace, there to be dealt with as provided for in said section; and they may **seize,** or cause to be seized, all intoxicating **liquors,** wine or beer, of any kind, with the vessels containing the same, and all tools or other implements used in any gambling or other game of chance, and may **remove,** or cause to be removed, all shows, swings, booths, tents, carriages, wagons, vessels, boats, or any other **nuisance** that may obstruct, or cause to be obstructed, by collecting persons around or otherwise, any thoroughfare leading to the enclosure in which such agricultural fair is being held; and any person owning or occupying any of the causes of obstruction herein specified who may refuse or fail to remove such obstruction or nuisance, when ordered to do so by the president of such society, shall be liable to a fine of not less than five and not more than twenty dollars for every such offense.

Secs. 28 to 45 formed sections 12 to 29, ch. 1, R. S. 1866, p. 7.

28. Whenever any owner or owners, occupier or occupiers, of any lands bordering upon any public road or highway, except a street or alley in a town, may wish to plant and cultivate any **hedge** or live **fence** along the margin of his, her, or their land, it shall be lawful for any such person or persons to set and plant any such hedge or live fence precisely on the line of the road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of said road, and such protection fence, when placed opposite any live fence or hedge, actually set and planted, shall be permitted by the county commissioners, and all other persons, to remain for the term of seven years; *Provided,* That the county commissioners may grant permission in writing to the owner or owners of any live fence or hedge to continue such protection fence any term of time which they may deem necessary.

This is not applicable to railroad company. **26,** 188 (41 N. W., 993). Where a person constructs a division fence without complying with the statute, he cannot have any contribution from owner of adjoining land. The statutory mode of apportionment and procedure is exclusive. **12,** 485 (11 N. W., 741).

29. When two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, except the owner of either of the adjoining lands shall choose to let his lands lie open.

30. When any person shall have chosen to let his lands lie open, if he shall afterwards enclose the same, or if the owner of lands adjoining upon the enclosure of another shall enclose the same upon the enclosure of another, he shall pay to the owner of the adjoining lands a just proportion of the value, at the time, of any division fence that shall have been made by such adjoining owner, or he shall immediately build his proportion of such division fence.

31. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be made and maintained by him in case of his enclosing his land, shall be determined by any two fence viewers of the precinct in the county.

32. If disputes arise between the owners of adjoining lands concerning the proportion of fence to be made or maintained by either of them, such disputes shall be settled by the fence viewers of the county; and in such case it shall be the duty of the fence viewers to distinctly mark and define the proportion of the fence to be made or maintained by each.

33. When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one, and if either neglect, after eight days' notice, to make such choice, the other party may select both.

34. The two fence viewers so chosen shall examine the premises and hear the allegations of the parties; in case of their disagreement they shall select another fence viewer to act with them, and the decision of any two of them shall be final upon the parties to such disputes, and upon all parties holding under them.

35. The decision of the fence viewers shall be reduced to writing, shall contain a description of the fence, and of the proportion to be maintained by each, and their decision upon any of the points in dispute between the parties submitted to them as aforesaid, and shall be forthwith filed in the office of the county clerk.

36. If any person who is liable to contribute to the erection or reparation of a division fence shall neglect, or refuse, for the period of four weeks after notice in writing so to do, to make and maintain his proportion of such fence, the party injured may make or repair the same at the expense of the party so neglecting or refusing, to be recovered from him with costs of suit; and the party so neglecting or refusing, after notice in writing, shall be liable to the party injured for all damages which thereby accrue, to be determined by any two fence viewers selected as above provided, and the fence viewers shall reduce their appraisment of damages to writing and sign the same.

37. If any person who shall have made his proportion of division fence shall be disposed to remove his fence and suffer his land to lie open, after having first given the adjoining owner at least sixty days previous notice in writing of his intention so to do, he may at any time between the first day of December in any year, and the first day of April following, but at no other time, remove the same.

38. If any such fence shall be removed without such notice, the party removing the same shall pay to the party injured all such damages as he may thereby sustain, to be recovered with cost of suit.

39. Whenever a division fence shall be injured or destroyed by fire, floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereto required by any person interested therein, such requisition to be in writing, and signed by the party making the same.

40. If such person shall **neglect** or refuse **to** make or **repair** his proportion of such fence for the period of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with cost of suit.

41. **Fence viewers** may examine **witnesses** on any and all questions submitted to them, and either of such fence viewers shall have power to issue subpœnas for and administer oath to such witnesses.

42. In all organized counties, **justices of the peace** shall be *ex-officio* **fence viewers of the county.**

43. **Fence viewers** shall be entitled to one dollar per day each for the time necessarily spent as above provided, to be **paid** in the first instance by the party requiring the service; and all expenses of the view shall be borne equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of the division fence, in which case the cost of view shall be paid by the party in default, and may be recovered as a part of the damage assessed.

44. **Damage** accruing to any person or persons, under provisions of this chapter, may be **recovered** in a civil action, in any court of this state.

45. **Any** structure or hedge or ditch in the nature of a **fence** used for the purposes of enclosure which is such as good husbandmen generally keep, shall be deemed a **lawful** fence.

Secs. 46 to 50. "An act to define a lawful fence, and other purposes." 1867 (Ter.), p. 17.

46. Such structures as shall be used for a **fence, to** enclose lands shall **be as follows**:

47. A **rail fence** shall consist of at least six rails, said rails to be secured by stakes at the end of each panel, well set in the ground, with a rider upon said stakes. A **board fence** shall consist of not less than three boards of at least five inches in width and one inch thick, said boards to be well secured to posts, the posts to be not more than eight feet apart. A **rail and post fence** shall consist of at least three rails, well secured at each end to posts, and posts to be not more than ten feet apart. A **pole and post fence** shall consist of not less than four poles, to be well secured to posts, said posts to be not more than seven feet apart. A **wire** fence shall consist of at least four wires, of a size not less than number nine fencing wire, to be well secured to posts, said posts to be at no greater distance than one rod from each other; and there shall be placed between every two of said posts one stake or post to which the wire shall be attached.

48. The fences described in the preceding section shall be at least four and one-half feet in height, and in the construction of said fences the **spaces between** the **boards**, rails, poles, and wires herein provided for shall not exceed one foot each, measuring from the top.

49. A **hedge** fence of **Osage** orange shall consist of at least one row of plants, said plants not to be more than eight inches apart at the surface of the ground, and said hedge shall be such as fence viewers shall decide a lawful fence. A **hedge** fence of **willow**, or other trees used for that purpose, shall consist of at least one row of such trees standing not more than fifteen inches apart at the surface of the ground, and at least two and one-half inches in diameter, and at least six feet in height.

50. Fence known as "**Warner's Patent**" shall be at least four and a half feet in height, and consist of not less than five boards, said boards to be at least five inches wide, and one inch thick.

Secs. 51 and 52. "An act to protect owners and occupants of enclosed and cultivated lands from trespass and damage." 1871, p. 126. In force March 8.

51. **[Trespass.]**—That any person or persons who shall go upon or pass over any cultivated or enclosed land in this state, without the consent of the owner or occupant thereof, or who shall do, or whose accompanying dog shall do, any damage to or upon said premises, or to any property thereon, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than the amount of damage committed, nor more than double the amount of such damage, and in addition thereto shall be liable to the person suffering such damages, for the amount thereof.

52. **[Same.]**—Any person or persons who shall enter or go upon any enclosure or cultivated lands owned or occupied by another, and shall refuse upon request of the owner or occupant thereof to go immediately therefrom, shall for each such refusal be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine not less than five dollars nor more than fifty dollars for each offense so committed.

Secs. 53 to 59. "An act to provide for the planting of shade trees in towns, cities, and villages." 1871, p. 51. In force March 1.

53. That the corporate authorities of the cities and villages of the state of Nebraska shall cause **shade trees** to be planted along the streets thereof.

54. For the above purpose a **tax** of not less than one dollar nor more than five dollars, in addition to all other taxes, shall be levied upon each lot adjacent to which the trees are to be planted as aforesaid and collected as other taxes.

55. **Trees** shall be annually **planted** when practicable on each side of one-fourth of the streets in each city and village in the state of Nebraska, until all shall have shade trees along them not more than **twenty feet apart.**

56. The corporate authorities aforesaid shall provide, by ordinance, the **distance** from the side of the street that trees shall be planted, and the **size** thereof.

57. Provided the **owner** of any lot or lots may plant trees adjacent thereto where ordered as above, in the manner and of the size prescribed, and on making proof thereof by affidavit to the collector, said affidavit shall **exempt** said owner from the payment of the aforesaid tax.

58. Any person who shall materially **injure** or shall destroy the shade **tree** or trees of another, or permit his animals to injure or destroy them, shall be liable to a **fine** of not less than five dollars nor more than fifty dollars for each tree thus injured or destroyed, which fine shall be collected on complaint of any person or persons before any court of proper jurisdiction. One-half of all fines thus collected shall be paid to the owner of the trees injured or destroyed; the other half shall be paid into the school fund.

59. That this **act** shall not **apply** to any person that is occupant of any business lot without his consent.

Secs. 60 and 61. "An act to encourage the growth and cultivation of timber in the state of Nebraska." 1879, p. 187. In force February 27.

60. **[Bounty.]**—That when any person shall plant and properly cultivate for the term of five years, six rows of trees eight feet apart, and the trees four feet apart in the row—along either the north section, or the half section line, running east and west—said rows to be not nearer to the said north section or half section line than four feet or than the south line of any road which may be laid out on said north section or half section line, or when any person shall fill out to the standard above prescribed, and keep the same in a proper state of cultivation for the time above stated, any rows of trees that may previously have been planted along said north

section or said half section line, it shall be the duty of the county commissioners to pay such person, by warrant on the county treasurer, a sum of money, amounting to three dollars and thirty-three cents per acre, for each acre so planted and cultivated, annually, so long as the same is planted and kept growing and in a proper state of cultivation, for a period not to exceed the space of five years, and to an extent not to exceed three acres of land.

61. It shall be the duty of the **assessor** of each precinct to make proper examination and **report** to the county commissioners at the time of his annual report the condition of all timber so planted and cultivated under the provisions of this act.

Secs. 62 to 66. "An act legalizing the Nebraska Dairymen's Association," etc. 1889, p. 565. In force March 2.

62. That the regularly organized and incorporated **society** known as the **Nebraska Dairymen's Association,** whose articles of incorporation are recorded in the office of secretary of state, be and the same is hereby **legalized** as a state institution.

63. The Nebraska Dairymen's Association shall hold a **convention annually** on the third Tuesday in December, at such place in the state as the board of managers may select, for the purpose of gathering statistics and diffusing practical knowledge on subjects pertaining to the dairy interests of the state, by addresses, papers, discussions, and such other means as the board of managers may direct.

64. The **secretary** of said association shall preserve all papers read, and take a stenographic report of all addresses and discussions at said annual convention, and shall make a report of the same to the governor, together with a full report of all business transacted, including an itemized statement of all expenditures of money, and shall publish in pamphlet form not less than two thousand (2,000) copies of said report, which shall be distributed according to the laws governing the distribution of the reports of the state board of agriculture.

65. The **sum** of one thousand dollars is hereby annually **appropriated** out of any moneys in the state treasury not otherwise appropriated, for the use and benefit of said association, and the state auditor is hereby authorized to draw his warrant for the same upon presentation of proper vouchers therefor, certified to by the president and secretary of said association, said amount to be used only for defraying the expenses incurred in holding conventions and in publishing and distributing reports and such other purposes as in the discretion of the board of managers shall best subserve the dairy interests of the state.

66. If any officer or **member** of said association shall convert any of the moneys hereby appropriated to his own use, or suffer the same to be lost or expended in any other way or manner or for any other purpose than is designated by law, such officer or member shall be deemed guilty of **embezzlement,** and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Secs. 67 to 69. "An act for the protection of dairymen, and to prevent deception in sales of butter and cheese." 1883; p. 239. In force February 20.

67. That any person, company, or corporation who shall **manufacture** for sale any article, **or** who may offer or expose for **sale** any article or substance in semblance of butter or cheese, not the legitimate product of the dairy, and not made exclusively of milk or cream, but into which any vegetable oil or the oil or fat **of** animals not produced from milk enters as a component part, or into which melted butter or any oil thereof has been introduced to take the place of cream, shall distinctly and durably stamp, brand, or mark upon every tub, firkin, box, or package

of such article or substance the word **oleomargarine or butterine,** in plain Roman letters not less than half an inch square, placed horizontally in proper order, and in case of retail sales of such articles or substances in parcels, the seller shall in all cases deliver therewith to the purchaser a written or printed label, bearing the plainly written or printed word oleomargarine or butterine in type or letters as aforesaid, and every sale of such article or substance not so stamped, branded, marked, or labeled shall be void, and no action shall be maintained for the price thereof.

68. Any person, company, or corporation who shall sell, or offer to sell, or have in his or her possession with **intent to sell,** contrary to the provisions of this act any of the said **articles not** so stamped, **marked,** or labeled, or in case of retail sale, without delivery of the label required by section one of this act [67], shall for each such offense forfeit and pay a **fine** of one hundred dollars, to be recovered in any court in the state of competent jurisdiction.

69. That any person, company, or corporation who shall sell, or offer or expose for **sale,** or shall cause or procure to be sold any article required by the first section of this act to be marked, branded, stamped, or labeled, not so marked, branded, stamped or labeled, shall be guilty of a **misdemeanor,** and on trial for such misdemeanor, proof of the sale or offer or exposure alleged shall be presumptive evidence of knowledge of the character of the article so sold or offered.

CHAPTER 2.—ANIMALS.

MARKS AND BRANDS.*

Secs. 70 to 77 formed chap. 33, R. S. 1866, p. 253, entitled "Marks and Brands."

70. Every person having cattle, hogs, and sheep shall have a mark or **brand,** different from the mark or brand of his neighbors, and he shall deliver to the county clerk a description of his mark or brand, and such clerk shall **record** the same in a well bound book kept by him for that purpose.

71. **[Cannot be duplicated.]**—No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person.

72. **No person** shall use **more than one** mark or brand for his stock, nor use any other than the one recorded.

73. Every person shall mark or **brand all** his hogs or sheep over six months old, and his cattle over twelve months old, and if any **dispute** arise about the question of whose any mark or brand may be, the same shall be decided by the record of the county clerk.

74. **[Fraudulent recording.]**—If any person shall willfully and knowingly have a mark or brand recorded which is already recorded to another person in the same county, he shall be fined not less than twenty dollars nor more than one hundred dollars.

75. **[Same by clerk.]**—If any county clerk shall record the same mark or brand to more than one person, he shall forfeit and pay, to the use of the county, a fine not exceeding one hundred dollars.

76. Every person who shall willfully and with intent to defraud, **misbrand,** or mismark any stock not his own shall forfeit and pay for every such offense not less than twenty dollars nor exceeding one hundred dollars.

77. If any person **alter** or deface the mark or **brand** of any other person, for every head of stock whose mark or brand shall be thus altered or defaced he shall forfeit not exceeding one hundred dollars.

Secs. 78 to 85. **"An act relating to the use of marks and brands on live stock."** 1879, p. 157. **In force June 1.**

78. Any person having cattle, hogs, sheep, horses, mules, or asses shall have the right to adopt a **brand** or ear-mark, for the use of which he shall have the **exclusive right** in the county in which such ear-mark or brand is recorded.

79. **[Cannot be duplicated.]**—No person shall have or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person.

80. Any person desiring to use any **brand** or ear-mark shall make and sign a **certificate** setting forth a *fac-simile* and description of the brand and ear-mark which he desires to use, and shall file the same for **record** in the office of the county clerk of said county in which he resides. And any person so desiring may, in the manner, and with like effect as herein provided, record his brand or marks in any county in this state into which his stock is liable to stray; *Provided,* That such mark or brand has not been heretofore recorded in such county by some other person.

81. The authority of deciding whether a brand or mark offered for record does or does not **conflict** with any previously recorded brand or marks shall be vested

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*It is a question if this act is not repealed by the succeeding one, but it is not done expressly.

in a committee of three, consisting of the county clerk and two respectable stock owners of the county. The two stock owners shall be appointed by the county commissioners, they shall be men of good judgment and experience in brands, and when practicable shall be chosen from those largely interested in cattle. Vacancies occurring in the membership, other than the county clerk, shall be filled by the county commissioners. All brands offered for record shall be submitted before acceptance to this committee. The objection of any two shall reject a brand. It shall be the duty of the county clerk to file all brands offered for record pending the examination, which he shall cause to be made as promptly as possible, and if the brand is accepted, the ownership shall date from the date of filing.

82. **[Committee—Appointment—Duties.]**—It shall be the duty of the county commissioners immediately after the passage of this act, to make the appointment above specified, one of whom shall serve till the first day of January following, another until the first day of January the next succeeding year, the county commissioners appointing a member to serve for two years at their first meeting in the month of January in each year. After this shall have been done the county clerk shall at once call together the committee; they shall examine the present record of brands, and in any case where, in the judgment of two of them, a brand is found which conflicts with one previously recorded, or which might in its use endanger the property of the party owning the brand earliest of record, it shall be the duty of the county clerk to notify the party owning said brand last of record that the further use of the same will be illegal to the same extent as though it had never been recorded, unless previously agreed upon by owners of such brands, and a joint statement be presented to the recorder of brands by such brand owners; the said notice shall be given by letter, when possible, and also, and in all cases by publication for one month in two papers of general circulation in the county, the expense of which shall be paid on a proper voucher by the county commissioners; both forms of notice shall be given immediately after said examination and rejection. It is expressly provided that this enactment shall not in any way affect or invalidate the ownership of animals which were branded with said brand then registered previous to the examination and rejection, the object of this act being to make illegal and enjoin from the further use of said brand. The date of the last publication shall be considered to be the date of rejection.

83. It shall be the duty of any person who, after the passage of this act, brings into any county of this state and turns loose for grazing purposes any herd, brand, or individual animals already branded, to lay before the above committee a statement of the brands of said animals, and if in the judgment of any two of them said brands conflict with any previously recorded in that county, it shall be the duty of the owner or manager of said animals to brand them with a brand that the committee shall consider a full and distinguishing mark from all brands there recorded, but the owner shall be enjoined from any further use of the conflicting brand. A failure to comply with the above shall render the party so failing liable for all damages resulting from such failure, which damages may be recovered in a civil suit. It is further provided that this section shall apply to all animals now in any county in this state whose brands are considered by this committee to infringe on previously recorded ones.

84. In deciding as to the conflict of brands, the committee will reject any one that, being the same as one previously recorded, has in addition any of the following, whether placed across, above, below, at either side, or encircling the main brand, viz: a straight bar, a quarter, half, or entire circle, a quarter, half, or entire diamond, either upright or inverted, the same not constituting a true brand, and ren-

dering the owner of the same brand liable to damage by its use, saving only when one or more of these shall be filed by the owner of the first record of the main brand, in which case it may be accepted. The **committee** shall **reject** any brand formed by repetition of any letter, number, or figure which shall have been previously recorded, whether to be placed on the same or on a different part of the animal; the exclusive right of the first record to the letter, number, or figure, and to repetition of it being reaffirmed. They shall also reject all brands known as solid brands, and all ear-marks which shall remove to exceed one-half of the ear. A variation in the size of the letter, number, or figure shall not constitute a new brand, and shall be rejected. A combination of letters, numbers, or figures may be permitted though the same letters, numbers, or figures may have been recorded singly or together, if in the judgment of the whole committee said combination is so different from any previous record as to constitute a new brand, with no danger of infringment; but in this case the objection of one member shall reject.

85. In all suits in law or in equity, or in any criminal proceedings, when the title to any stock is involved, the **brand** on any animal shall be *prima facie* **evidence of** the **ownership** of the person whose brand it may be; *Provided*, That such brand has been duly recorded as provided by law. Proof of the right of any person to use such brand shall be made by a copy of the record of the same, certified by the county clerk of that county or of any county in which the same is recorded under the hand and seal of office of such clerk.

LIENS.

Sec. 86. "An act to provide for liens upon live stock for their keeping." 1867 (Ter.), p. 12. In force February 18.

86. When any person shall procure, contract with, or hire any other person to feed and take **care** of any kind **of** live **stock**, the person so procured, contracted with, or hired shall have a **lien** upon such property for the feed and care bestowed by him upon the same for the contract price therefor, and in case no price has been agreed upon, then for the reasonable value of such feed and care. The person entitled to any lien under the provisions of this section may foreclose the same in the manner provided by law for the **foreclosing** of chattel mortgages; *Provided*, That at least thirty (30) days before the sale of property for the satisfaction of such lien, the person entitled thereto shall file in the office of the county clerk in the county in which said live stock may be fed and kept an affidavit describing said live stock, and setting forth the amount justly due for the feeding and keeping of the same.

Entirely rewritten. 1889, p. 378. In force June 30. Where liveryman fed horses for owner but did not have possession of them, and owner mortgaged them, the mortgagee's lien was held superior to liveryman's. **12**, 68, (10 N. W., 462). Must be procured, contracted with, or hired otherwise no lien. **20**, 92 (29 N. W., 177).

Sec 87. "An act for the protection of owners of stallions, jacks, and bulls. 1883, p. 58. In force February 27.

87. **[Lien on offspring.]**—That owners of stallions, jacks, and bulls in the state of Nebraska have a lien upon the get of such stallion, jack, or bull for the period of nine months after the birth of same for the payment of the services of said stallion, jack, or bull; **Provided*, That the owner of the stallion, jack, or bull shall have filed in the office of the clerk of the county in which such get is owned a description of the same, with date of birth, within one hundred and twenty days after the birth thereof. Said lien may be at any time after the filing of said description foreclosed in manner and form as provided by law for foreclosing of chattel mortgages.

Changed from six months and all after * added in 1887, p. 70.

HERDING, ESTRAYS, ETC.

Secs. 88 to 96. "An act regulating the herding and driving of stock." 1879, p. 67. In force June 1.

88. Every **person** who shall keep neat cattle, horses, mules, sheep, or goats for their growth or increase within the state shall be **deemed a stock grower.** Any person who shall drive or bring neat cattle into or through this state shall be deemed a cattle **drover.**

89. That any cattle drover, or his employee, who shall **drive off** any neat cattle, horses, mules, or sheep belonging to another intentionally, or through neglect, shall, on conviction thereof, by any court of competent jurisdiction, be **fined** in any sum not more than one hundred (100) dollars for each and every head of cattle, horses, mules, or sheep so driven off.

90. In any **indictment** or complaint under this act, the **description** of any kind or class of neat cattle shall be deemed sufficient if described as cattle, and for the purpose of this act the proof of brand shall be deemed to be *prima facie* evidence of ownership of such stock.

91. That no stallion over the age of eighteen months, nor any Mexican, Texan, or Cherokee bull over the age of ten months, nor any Mexican ram over the age of eight months shall be permitted to run at large in the state of Nebraska. The owner or person in charge of such animal or **animals** as are prohibited from **running at large** by this section who shall permit such animal or animals to run at large may be fined for each offense not less than fifty ($50) dollars, nor more than two hundred ($200) dollars, and it shall be lawful for any person to castrate, or cause to be **castrated,** any such animal found running at large: *Provided,* That if any person shall castrate any stallion, bull, or ram, and it shall, on proper evidence before any competent court, be proven to the satisfaction of said court that such animal was not of a class of stock prohibited from running at large by this act, said person shall be liable for damages to the amount of the value of said animal so castrated, and the cost of suit; *Provided, also,* That for the purpose of this act that any bull possessing one-half (½) Texan, Mexican, or Cherokee blood shall not be deemed a Texan, Mexican, or Cherokee bull, as the case may be; and any ram possessing one-half Mexican blood shall not be deemed a Mexican ram.

Title is not comprehensive enough to authorize giving damages for castration of animals. **13,** 253 (13 N. W., 276.)

92. Any person owning or having charge of any **drove** of cattle, horses, or sheep numbering one (1) head or more than that number in any such drove of cattle, horses, or sheep, and shall drive the same into or through any county of Nebraska of which the owner is not a resident, or land owner, or stock grower, and when the land in said county is already occupied by settlers on ranches, it shall be the duty of said owner or person in charge of said horses, cattle, or sheep to prevent the same from **mixing** with the cattle, horses, or sheep belonging to actual settlers, and also to prevent said drove of cattle from **trespassing** on such land as may be the property of the actual settler, or may be held by him under a homestead, preemption, or leasehold right, and used by him for the grazing of animals, growing hay, or timber, or other agricultural purposes, or doing injury to the ditches made for the irrigation of crops. If any owner or owners or persons in charge of any such drove of cattle, horses, or sheep, shall willfully, carelessly, or negligently injure any resident within the state by driving said drove of cattle, horses, or sheep from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor, and shall be punished by a fine of not less than twenty ($20) dollars and not more than

one hundred ($100) dollars, at the discretion of the court, and render the owner or owners, or person in charge of the drove of cattle, horses, or sheep, liable for such damages as may be done to the property of said settler.

93. When the **stock** of any person shall be **driven off** its range within Nebraska against his will by the drovers of any drove, and the same shall be found among such drove, every person engaged as **drover** of said drove shall be **liable** for damages to the party injured to the amount of the full value for the animal for each head so driven off, together with all costs accruing in the trial of said cause, and said herd of stock shall be liable for the same, or a sufficient number to cover all damages and costs.

94. When the stock of any resident of the state of Nebraska shall either [?] mix with any drove of any animals it shall be the duty of the **drover** or drovers, or person in charge of such drove, **to** cut out and **separate** such stock from said droves immediately. Every person, either owner or driver, or otherwise connected with said drove, who shall neglect to comply with the provisions of this section, shall be fined in any sum not exceeding one thousand ($1,000) dollars.

95. It shall be unlawful for any person other than the owner, or his agent or employee, to skin or **remove** from the carcass the **skin,** hide, or pelt **of** any neat cattle or sheep found **dead,** except when such **stock** is killed by railroad trains, when the employees of such railroads may remove the hides from the stock so killed.

96. The county commissioners of the several counties may offer and pay **rewards** for the detection of those violating this act.

Secs. 97 to 105. "An act for a general herd law to protect cultivated lands from trespass by stock." 1871, p. 120. In force April 1. (Secs. 9 and 10 of original act repealed 1889, p. 430.)

97. That the **owners** of cattle, horses, mules, swine, and sheep in this state shall hereafter be **liable** for all damage done by such stock upon the cultivated lands in this state as herein provided by this act.

98. That all **damage** to property so committed by such stock running at large, shall be **paid** by the **owners** of said stock; and the person whose property is so damaged thereby may have a **lien** upon such trespassing animals, for the full amount of damages and costs, and may enforce the collection of the same by the proper civil action.

Owner can replevy after tendering damage. 19, 580 (27 N. W., 646).

99. That when any such stock shall be found upon the cultivated lands of another, it shall be lawful for the owner or person in possession of said lands to **impound** said **stock,** and if the owner of said stock can be found, and is known to the taker-up, it shall be the duty of said taker-up to notify said owner by leaving a written **notice** at his usual place of residence, with some member of his family over the age of fourteen, or, in the absence of such person, by posting a copy of such notice on the door of said residence, of the taking up of said stock, describing it, and stating the amount of damages claimed; also, the name of his arbitrator, and requiring him, within forty-eight hours after receiving said notice, to take the said property away, after making full payment of all damages and costs to the satisfaction of said taker-up of trespassing animals. Said notice may be in the following form: Mr. ——: You are hereby notified that on the —— day of ——, 18——, your stock, of which I now have in my possession—(here describe the animal or animals)—did trespass upon my land, and damage the same to the amount of ——. You are required to pay the above charges within forty-eight hours from the delivery of this notice, or the aforesaid stock will be sold, as provided by law. I have appointed Mr. —— to act as arbitrator should you not feel satisfied with the amount

of damages claimed in the within notice. *Provided,* That no claim for damages shall be maintained by the taker-up without the notice contemplated in this section shall have been given, when the owner is known by the taker-up of such stock.

To maintain possession and lien, taker-up must comply strictly with the law. **18,** 178 (24 N. W., 728). Owner entitled to a reasonable time to pay damages. **6,** 273. Party taking up stock acquires no lien upon it unless he complies substantially with the statute. **13,** 425 (14 N. W., 160). History of former herd laws in this state given, and *held,* that an action could not be maintained for trespass of stock upon unenclosed, uncultivated, wild prairie land. **10,** 492 (6 N. W., 600). Remedy provided by this statute is not exclusive, but cumulative. **12,** 272 (11 N. W., 315).

100. **If** the **owner** of said stock shall **refuse,** within forty-eight hours after having been notified in writing, to pay said damages claimed, or appoint an arbitrator to represent his interest, said animal or **animals** shall be **sold** upon execution as required by law, when said amount of damages and costs have been filed with any justice of the peace of the county within which said damages may have been sustained.

Issuance and service of summons not necessary, but a general judgment cannot be entered by justice. **17,** 101 (22 N. W., 124, 347).

101. [**Arbitrators.**]—In case the parties interested cannot agree as to the amount of damages and costs sustained, each party may choose a man, and in case the two men chosen cannot agree, they shall choose a third man, who, after being duly sworn for the purpose herein named, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

13, 425 (14 N. W., 160).

102. The said arbitrator or arbitrators shall made [make] an **award** in writing, which, if not paid within five days after the award has been made, may be filed with any justice of the peace in the same county, and shall operate as a judgment, which judgment shall be a lien upon the stock so taken up, and execution may issue upon said stock for the collection of said damages and costs, as in other cases; *Provided,* That either party may have an appeal from said judgment, as in other cases before justices of the peace. Said arbitrators shall be allowed two dollars each for their services; **Provided further,* That if, before the trial by said arbitrator or arbitrators, the owner of said stock shall tender to the person injured an amount in lieu of said damage and costs which may have accrued, which shall equal the amount of **damage** afterward awarded by the arbitrators, court, or jury, or shall affirm [offer in] writing, to confess judgment for the same, and if, notwithstanding the said injured person refusing said offer, cause the trial to proceed, he shall pay costs and necessarily the damage awarded.

All after * added 1875, p. 187. **13,** 426 (14 N. W., 160).

103. In case the **owner** of said stock is **not known** or found in said county, as herein set forth, the taker-up of said stock so trespassing upon cultivated lands, shall, in such cases, proceed as provided by law regulating estrays, and the stock shall be held liable for all damages and costs.

104. That **cultivated lands,** within the meaning of this act, shall include all forest trees, fruit trees, and hedge-rows planted on said lands, * also all lands surrounded by a plowed strip, not less than one rod in width, which strip shall be plowed at least once a year.

All after * added 1881, p. 65.

105. Nothing herein contained shall be so construed as to prevent any **owner of** cultivated **lands,** or fruit and forest trees, from **maintaining** an **action** for all damages caused by stock which has escaped or been driven away from the premises of the party, thus damaged, against the owner of the stock causing such damage.

Secs. 106 and 107. "An act to restrain sheep and swine from running at large in the state of Nebraska." 1875, p. 190. In force March 1.

106. That from and after the first day of March, A. D. 1875, **sheep** and **swine** shall be restrained from running at large in the state of Nebraska.

107. That all **damages** to property committed by such stock so running at large shall be paid by the owner of said stock, and the person whose property is damaged thereby, may have a lien upon said trespassing animal for the full amount of damages and costs, and enforce and collect the same by the proper civil action.

Secs. 108 and 109. "An act to prevent damage by certain domestic animals during the night time in the state of Nebraska in organized counties in the state where no herd law is in force." 1879, p. 165. In force June 1.

108. No cattle, horses, mules, swine, or sheep shall **run at large** during the **night time,** between sunset and sunrise, in the state of Nebraska, and the owner or owners of any such animal shall be liable in an action for damages done during such night time.

14, 74 (15 N. W., 197).

109. **Damages** shall be assessed and collected by notice given to owners, and arbitrators chosen, stock sold, judgment awarded; and in case of estrays, as provided in sections 2, 3, 4, 5, 6, 7, and 8 of this article [98 to 104].

Secs. 110 to 113 formed secs. 30 to 33, ch. 1, R. S., 1866, p. 10.

110. If any domestic **animal** break into any enclosure, the person injured thereby shall recover the amount of **damage** done, if it shall appear that the fence through which said animal broke was a lawful fence.

See **23,** 570 (37 N. W., 456).

111. **If** before trial the **owner** of such trespassing animals shall **have tendered** to the person injured an amount in lieu of damage and **costs** which may have accrued, which shall equal the amount of damage afterward awarded by the court or by the jury, or shall offer in writing to confess judgment for the same, and if, notwithstanding the said **injured person refusing** said offer, cause the trial to proceed, he shall pay costs, and recover only the damage awarded.

112. If any **person sow** any grain, or plant any **crop, without** enclosing the same with a sufficient **fence,** as above provided, he shall be **liable** for all damages that any person or persons may sustain in consequence of such neglect to enclose the same.

113. This subdivision **shall not** extend to or in anywise **affect** any county in this state in which horses, mules, cattle, sheep, or swine are restrained from running at large by reason of legislative enactment.

Secs. 114 to 129 formed chapter 18, R. S. 1866, p. 153, entitled "Estrays."

114. It shall be lawful for any person holding land in this state, by deed, title, bond, or lease for one or more years, and being in possession thereof, to take up any **estray** horse, mule, or ass, neat cattle, sheep, or swine, found within his enclosed premises at any season of the year; and any estray found around the premises of any lessee or freeholder between the twentieth day of October and the first day of April, may be taken up by such lessee or freeholder; and any horse, mule, or ass, with any portion of harness attached to them, and any oxen, with yoke, that are believed to have estrayed away from their owners may be taken up by any person at any time.

115. It shall be the **duty of** any **person taking up** an estray animal or animals to send a description of the same to a justice of the peace in the precinct where the said estray was taken up, within forty-eight hours thereafter, and said justice of the peace shall record the same in a book kept by him for that purpose, for which he shall receive the sum of twenty-five cents. If said estray or estrays shall not be

claimed by the owner thereof within ten days thereafter, a description of the same shall be sent to the county clerk by the party taking up said estray, who shall immediately record the same in a book kept by him for that purpose, for which he shall receive the sum of twenty-five cents. The person taking up the estray shall, within twenty days thereafter, procure the publication of the description of such animal or animals in any newspaper published within the county.

Rewritten 1889, p. 428.

116. The proprietor of such newspaper shall **publish** said **description** for at least five consecutive weeks, and shall receive therefor the sum of three dollars; *Provided,* That if two or more estrays of the same species shall be taken up by the same person at the same time, they shall be included in the same publication; and in such case the aforesaid publisher shall receive no more than for one of such species, except where the number so described shall exceed three, he shall receive one dollar for each estray beyond that number included in such publication.

117. The **owner** of an estray may, at any time previous to its sale, **reclaim** the same on proving said property, by oath or otherwise, and paying for the advertisement, and a reasonable compensation for any other necessary expenses incurred by the person taking up said estray.

118. In case the parties cannot agree upon the amount of the **expenses** incurred, they may each choose a disinterested person to act as **arbitrators,** and the two chosen may choose a third. The decision of the arbitrators shall be final.

119. When an estray, if it be a sheep, swine, or calf under the age of one year, has not been reclaimed within six months after the advertising the same, it shall become the property of the person taking it up, without further **proceedings.** If the estray be a horse, mule, ass, bull, cow or steer over the age of two years, it must be reclaimed within six months from the time it was first advertised. If the estray is an animal over the age of one year, and not over the age of two years, it must be reclaimed within six months from the time it was first advertised. If any estray included in the two last named classes shall not be reclaimed within the time specified respectively, the person taking up the estray shall notify a justice of the peace of the county wherein said estray was taken up, who shall appoint two disinterested persons, and administer to them an oath or affirmation to faithfully and truly appraise said estray, and said persons, upon actual view of said property, shall appraise the same at its true value, and make due return thereof, in writing, to said justice of the peace, who shall appoint a day of **sale,** and cause notice of the time and place of sale to be published at least five weeks consecutively before the day of sale, in a newspaper printed in said county, and by posting up written or printed notices in three public places in the precinct where the estray is to be sold; and in case there is no newspaper printed in said county, there shall be three additional written or printed notices posted up at the county seat of said county, and on the day appointed said estray shall be sold by said justice to the highest bidder in cash; and the proceeds thereof, after deducting the costs of the proceedings and the expenses of keeping said estray, shall be paid to the county treasurer within ten days after the sale, subject to the order of the owner, provided the owner of said estray shall establish his ownership to the same, to the satisfaction of the county treasurer of said county within one year from the day of sale; and if said balance is not so claimed within the time so specified, it shall be placed by said treasurer to the credit of the general school fund of said county.

120. The **place of sale** shall be at the residence of the person taking up the estray.

121. When an estray is sold, it **must bring** at least two-thirds of the ap-

praised value. In case it does not, the animal shall be re-appraised, and again offered for sale one week after the day appointed for the first sale, and no advertisement shall be necessary for the second sale.

122. When the appraisers think that the animal will not bring more than enough to defray the necessary expenses of the sale and advertisement thereof, said sale shall be dispensed with, and the person who took up the animal shall, on the payment of expenses, be the owner thereof.

123. The money received from the sale of an estray shall go into the county school fund, all expenses first being paid.

124. Any person violating section ten of this chapter shall be liable to a fine of not less than twenty dollars nor more than two hundred dollars.

125. The appraisers of estrays shall estimate the value of the labor, trouble, and expense of the person taking up and keeping an estray—taking into consideration the services rendered by the animal.

126. **[Fees of appraisers.]**—The appraisers of estrays shall receive fifty cents each for each appraisement, but when more than one animal is taken up at any one time by one person, they shall all be appraised as one, and the appraisers shall be entitled to compensation for but one appraisement. The justice of the peace shall receive for his services the sum of one dollar and fifty cents.

127. **[Payment of expenses.]**—The advertisement, the appraisement, and the services of the justice of the peace shall be paid by the person taking up the estray, and he shall receive the same, with fifty per cent additional, from the proceeds of the sale of the estray.

128. If any horse or mule not gelded, two years old or upwards, shall be found running at large, it shall be lawful for any person to take up such horse or mule, and forthwith give notice to the owner or keeper, if he be known to the taker-up, and if the owner or keeper do not appear within three days thereafter, and pay to the said taker-up two dollars as compensation for his trouble, the taker-up shall proceed to advertise said horse or mule, and the same proceedings shall be had in every respect as hereinbefore provided in cases of estray horses or mules; *Provided*, That the taker-up may, after the expiration of twenty days from the time of advertising, geld, or procure to be gelded, the said horse or mule, which shall be done at the risk and expense of the owner.

129. Should any animal taken up as an estray die while in possession of the person taking it up, he shall not be liable for the loss, unless its death was the result of mistreatment or willful neglect.

Secs. 130 to 135. "An act to provide for the protection of stock from contagious diseases." 1867 (state), p. 74. In force June 20.

130. That every person shall so restrain his diseased or distempered cattle, or such as are under his care, that they may not go at large; and no person or persons shall drive any diseased or distempered cattle affected with any contagious or infectious disease into or through this state or from one point thereof to another. Any person or persons offending against this section shall, on conviction thereof before any justice of the peace, forfeit not less than five nor more than twenty-five dollars for every head of such cattle, and be liable for all costs and damages.

131. Any justice of the peace, upon proof before him that any cattle are going at large or are driven in or through his county in violation of the preceding section, shall order a constable or sheriff to impound them, and the owner thereof shall be held liable for all costs and damages.

132. The sheriff or constable who may execute the order of any justice of the peace as aforesaid, to impound any such cattle, shall have twenty-five cents per head

for the first fifty, and five cents for each additional head, to be **paid** by the defendant upon conviction thereof, but in case the defendant be discharged, then such costs to be paid by the complainant; and if any officer to whom any order under this law is directed should fail to execute, he shall forfeit, in case of a failure, a sum not less than one hundred dollars.

133. It shall not be lawful for any person to use, let, sell, or permit to run at large any horse, mule, or ass diseased with the **glanders.** Any person violating the provisions of this section shall pay a fine of not less than five nor more than fifty dollars, and shall be liable for all damages.

It is a good defense to an action on a promissory note, that the sole consideration was a glandered horse. 29, 304 (45 N. W., 462).

134. All **fines** and forfeitures incurred under the provisions of this act shall be recovered by action before any justice of the peace, and all such fines shall be paid into the school fund, in and for the county having jurisdiction of the case.

135. In all cases of **conviction** under the provisions of this act the justice shall enter **judgment** for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment for the use of the common schools of the county.

Secs. 136 to 139. "An act to prevent the importation, selling, or running at large of domestic animal or animals affected with any infectious or contagious diseases." 1883, p. 59. In force February 20.

136. It shall **not** be **lawful** for the owner of any domestic animal or animals, or any person having them in charge, knowingly **to import** or drive into this state any animal or **animals having** any contagious or infectious **disease**; and any person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine in any sum not less than $1 nor more than $100, and be imprisoned in the county jail not more than three months, or both, in the discretion of the court.

137. Any person being the **owner of** any domestic animal or **animals,** or having the same in charge, who shall turn out, or suffer any such domestic animal or animals having any contagious or infectious disease, knowing the same to be so **diseased,** to run **at large** upon any unenclosed land, common, or highway, or shall let the same approach within twenty rods of any highway, or shall sell or dispose of any domestic animal or animals, knowing the same to be so diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and shall be **punished** by a fine in any sum not exceeding five hundred dollars, and imprisoned in the county jail not less than six months.

138. Nothing in this act shall be so construed as to prevent the recovery of **damages** in a **civil action** against any person or persons who shall sell, trade, or import, or drive into this state, such diseased animal or animals, or who shall allow such domestic animal or animals to run at large, or to approach nearer than twenty rods of any highway.

139. Any **person violating** any of the provisions of this act, in addition to the penalties herein provided, shall be **liable** for all damages that may accrue to the party damaged by reason of said diseased animal or animals imparting disease.

Secs. 140 and 141. "An act to prevent spread of **hog cholera** and other kindred diseases, and to prevent traffic in animals dying from infectious or other diseases." 1885, p. 89. In force March 4.

140. That it shall be the duty of the owner of swine or other domestic animals dying from cholera or other diseases, within twenty-four hours after their death, to cause the **carcass** of such animals to be suitably **buried or burned** on the premises owned or occupied by such person.

141. **If** the owner of any swine or other domestic animals dying from cholera or other disease, or **any** other **person**, shall **sell** or dispose of the **carcass** of such swine or other domestic animals to any person for the purpose of manufacturing the same into soap or rendering the same into lard, or for other purposes, **or** if any person shall **buy** or otherwise obtain the **carcass** of any swine or other domestic **animals dying from** cholera or other **disease** for manufacturing purposes as aforesaid, or any other purpose except that of burial or burning as provided in the preceding section, every such person shall upon conviction be fined in any sum not less than twenty-five ($25) dollars nor more than one hundred ($100) dollars, or be imprisoned not exceeding six mouths.

Secs. 142 to 168. "An act to amend an act entitled 'An act concerning the care of and to prevent the spread of contagious and infectious disease among domestic animals; to provide for the appointment of a live stock sanitary commission and state veterinary surgeon defining their and duties and regulating their compensation,' approved March 5, 1885, and to repeal said powers act." 1887, p. 72. In force March 31.

142. The governor is hereby authorized to employ four agents, **one** of whom shall be a competent and skilled **veterinary surgeon,** who shall be a graduate in good standing of a recognized college of veterinary surgery, and who shall be known as the state veterinarian, and shall receive twenty-five hundred ($2,500) dollars per annum for his services; and **three** of said agents shall be **practical stockmen,** who are actually engaged in stock raising, and shall each receive five ($5) dollars per diem, and shall be known as the **live stock agents** of the state of Nebraska. And each of such agents shall receive their actual traveling expenses by them incurred and paid while in the discharge of their duties as such agents.

143. Before entering upon their duties the said agents shall take and subscribe an **oath** to faithfully discharge the duties of such office, and shall execute a **bond** to the state of Nebraska in the sum of five thousand ($5,000) dollars, with good and sufficient security, conditioned upon the faithful performance of the duties of their office, which bond and security shall be approved by the governor; and said bond, together with their oaths of office, shall be deposited in the office of the secretary of state.

144. It shall be the **duty of** the **veterinarian** to investigate any and all cases of contagious and infectious diseases among domestic animals of the state, which may come to his knowledge, or be brought to the notice of the live stock agent, and for this purpose shall visit at once any locality within the state where such contagious or infectious disease of domestic animals may be reported to exist, and make a full and careful examination of all animals supposed to be diseased, and inquire into the nature and cause of any such disease which he may discover, prescribe the proper care, necessary remedies, and direct the sanitary measures necessary to prevent the spread thereof, and to make a full report of his findings and doings in the premises, to the live stock agents, with recommendation and suggestions as to the means necessary to be employed to prevent the spread, and best calculated to exterminate any and all such contagious or infectious diseases, by him found to exist among the domestic animals of the state.

145. **[Same.]**—The state veterinarian shall make a continuous scientific study, investigation, and research of all contagious diseases of domestic animals, and the causes, preventatives, and cures thereof, and report the result of his study and investigation to the governor, giving in plain ordinary language the symptoms by which any such disease may be identified, how liable to be introduced and spread, the causes and conditions to which may be attributed the introduction of any such diseases, and the sanitary and other measures best calculated to prevent the germination and spread of any such contagious or infectious diseases among live stock,

together with the best known treatment and remedies, in time for publication in the several reports required by law, and perform such other services and duties as may be required by law, or directed by the governor, or the live stock agents, in the interest of the state.

146. It shall be the duty of the agents provided for in the first section of this act [142] to protect the health of the domestic animals of the state from all contagious and infectious diseases of a malignant character, and for this purpose it is hereby authorized and empowered to establish, maintain, and enforce such quarantine, sanitary, and other regulation as it may deem necessary. It shall be the duty of any member of said agents, upon receipt by him of reliable information of the existence among the domestic animals of the state of any malignant disease, to at once notify the veterinarian, who shall go at once to the place where any such disease is alleged to exist, and make a careful examination of the animals believed to be affected with any such disease, and ascertain if possible what, if any, disease exists among the live stock reported to be affected, and whether the same is contagious or infectious or not; and if such disease is found to be of a malignant, contagious, or infectious character, he shall direct the temporary quarantine and sanitary regulations necessary to prevent the spread of any such disease and report his finding and actions to the live stock agents.

147. Upon the receipt by any one of the report of the veterinarian provided for in section one (1) of this act [142], if said agent shall be of the opinion that the exigencies of the case require, he shall immediately convene the three live stock agents together with the veterinarian at such place as he may designate, and if, upon consideration of the report of the veterinarian, the agents shall be satisfied that any contagious or infectious disease exists of a malignant character, which seriously threatens the health of domestic animals, they shall proceed at once to the infected district, ascertain and determine the premises or grounds infected, and establish the quarantine, sanitary, and police regulations necessary to circumscribe and exterminate such disease; also to list and describe the domestic animals affected with such disease, and those which have been exposed thereto, and included within the infected district or premises so defined and quarantined, with such reasonable certainty as would lead to their identification; and for that purpose the said agents may, in their discretion, cause the live stock so included within the quarantine lines established to be marked or branded in such manner as they may designate; and no domestic animals liable to become infected with the disease, or capable of communicating the same, shall be permitted to enter or leave the district, premises, or grounds so quarantined except by authority of the live stock agents. The said agents shall also from time to time give and enforce such directions and prescribe such rules and regulations as to separating, mode of handling, treating, feeding, and caring for such diseased and exposed animals as it shall deem necessary to prevent the two classes of animals from coming in contact with each other, and perfectly isolate them from any other domestic animals which have not been exposed thereto and which are susceptible of becoming infected with the disease. And the said agents, or any of the members thereof, and said veterinarian are hereby authorized and empowered to enter upon any grounds or premises to carry out the provisions of this act.

148. When, in the opinion of the live stock agents, it shall be necessary to prevent the further spread of any contagious or infectious disease among the live stock of the state, to destroy animals affected with, or which have been exposed to any such disease, it shall determine what animal shall be killed and appraise the same as hereinafter provided, and cause the same to be killed and the

carcasses disposed of, as in its judgment will best protect the health of the domestic animals of the locality.

149. Whenever, as in the seventh section of this act [148] provided, the live stock agents shall direct the killing of any domestic animal or animals, it shall be the duty of the agents to make a fair and faithful **appraisement** of said animal or animals, and in making the appraisement the contagious disease with which the animal is affected, or to which they have been exposed, shall not be taken into consideration. The amount of the appraisement shall in no case exceed seventy-five ($75) dollars per head for horses and mules, and twenty ($20) dollars per head for cattle; *Provided*, That no animal or animals shall be appraised except those affected with contagious or infectious diseases of a malignant character, or such as have been exposed thereto.

150. When the agents shall have determined the **quarantine** and other regulations necessary to prevent the spread among domestic animals of any malignant, contagious, or infectious disease found to exist among the live stock of the state, and given its orders as hereinbefore provided, prescribing quarantine and other regulations, they shall notify the governor thereof, who shall issue his **proclamation** proclaiming the boundary of such quarantine, and the orders, rules, regulations, prescribed by the live stock agents, which proclamation may be published by written or printed hand-bills, posted within the boundaries or on the lines of the district, premises, places, or grounds quarantined; *Provided*, That if the agents decide that it is not necessary by reason of the limited extent of the district in which such disease exists that a proclamation should be issued, then none shall be issued, but the agents shall give such notice as may to them seem best to make the quarantine established by them effective.

151. The **agents** provided for in this act shall have power to **employ** at the expense of the state such **persons**, and **purchase** such **supplies** and material as it may be necessary to carry into effect all orders by them given, as hereinbefore provided; *Provided*, That no labor shall be employed, nor labor material or supplies purchased by the agents, except such labor material as may be necessary to carry into effect the experimentation, quarantine, and other regulations prescribed by the live stock agents; *And provided, further*, The agents may, in their discretion, upon the recommendation of the veterinarian employ such expert's assistance as may from time to time be required, and such assistant shall have power to execute all orders and instructions given them by the live stock agents.

152. It shall be the duty of the railway corporations doing business in this state to clean and **disinfect** the **cars** used by them in transporting stock in this state, at such times and places and in such manner as the live stock agents may designate, whenever in their opinion any such order may be necessary to prevent the spread of infectious or contagious diseases; and any such corporation violating any of the provisions of this act shall be liable to a penalty of five hundred dollars ($500) for each offense, to be recovered in civil action to be prosecuted under the directions of the attorney general, in the name of the state of Nebraska.

153. When any **animal** or animals are **killed** under the provisions of this act by order of the agents, the **owner** thereof shall be **paid** therefor the appraised value as fixed by the appraisement as hereinbefore provided for; *Provided*, The rights of indemnity on account of animals killed by order of the live stock agents, under the provisions of this act, shall not extend to the owner of animals which have been brought into the state in a diseased condition, or from a state, county, territory, or district in which the disease with which the animal is infected, or to which it has been exposed, exists; nor shall any animal be paid for by the state

which may have been brought into the state in violation of any law or quarantine regulation thereof, or the owner thereof shall have violated any of the provisions of this act, or disregarded any rule, regulation, or order of the live stock agents, or any member thereof; nor shall any animal be paid for by the state which came into the possession of the claimant with the claimant's knowledge that such animal was diseased, or was suspected of being diseased, or having been exposed to any contagious or infectious disease; nor shall any animal belonging to the United States be paid for by the state; *Provided, further*, That in no case shall compensation be allowed to the owner of any animal or animals, when, by reasonable diligence, he, his proper agent or employe, could have protected said animal or animals from being exposed, or to any owner who, in person or by agent, conceals the existence of any contagious or infectious disease among his stock; *And provided, further*, That no remuneration shall be paid by the state for animals slaughtered for contagious or infectious disease in any case where the owner or his representative is not the first to notify the proper authorities of the existence of such a disease, or a suspicion of the same, among his stock; that no remuneration shall be paid for horses or mules found diseased or suspected of glanders, when such horse or mule have been imported into the state and have not been in the state over six months.

154. It shall be the duty of any **owner** or person in charge **of** any domestic **animals** who discovers, suspects, or has reason to believe that any of his domestic animals, or domestic animals in his charge, are **affected with** any contagious or infectious **disease, to** immediately **report** such fact, belief, or suspicion to the live stock agents, or any member thereof, and to the sheriff and county clerk of the county in which such domestic animal is found, and it shall be the duty of any person who discovers the existence of any contagious or infectious disease among the domestic animals of another, to report the same at once to the sheriff and county clerk of the county in which such domestic animal is found.

155. The **sheriff**, to whom the existence of any infectious or contagious disease of domestic animals is reported, shall forthwith proceed to the place where such domestic animal is and examine the same, and forthwith report the result of such examination to the live stock agents, or any member thereof, and shall prescribe such temporary **quarantine** regulation as will prevent the spreading of the contagion or infection, until the live stock agents can provide and order suitable quarantine rules and regulations. Said sheriff shall receive for such services mileage fees as in other cases, and in each case of quarantine ordered, a further fee of two ($2) dollars, all of which fees shall be paid by the county where such services were rendered.

156. [**Diseased animals—Importation.**]—Any person who shall knowingly bring into this state any domestic animal which is affected with any contagious or infectious disease shall be deemed guilty of a mismemeanor, and upon conviction shall be fined in any sum not less than two hundred dollars ($200) nor more than four thousand dollars ($4,000).

157. Any person who owns or is in possession of live stock which is, or which is suspected or reported to be, affected with any infectious or contagious disease, who shall **refuse** to allow the veterinarian, or other authorized officer or officers, in any **examination** of, or in an attempt to examine such stock, shall be deemed guilty of a **misdemeanor**, and upon conviction thereof shall be fined in any sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

158. [**Quarantine violation.**]—Any person who shall have in his possession any domestic animal affected with any contagious or infectious disease, knowing such animal to be so affected, or after having received notice that such animal is

so affected, who shall permit such animal to run at large, or who shall keep such animal where other domestic animals, not affected by or previously exposed to such disease, may be exposed to its contagion or infection, or who shall sell, ship, drive, trade, or give away such diseased animal or animals which have been exposed to such infection or contagion, or who shall move or drive away any domestic animal in violation of any direction, rule, regulation, or order establishing and regulating quarantine, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each of such diseased or exposed domestic animals which he shall permit to run at large, or keep, or sell, drive, trade, or give away, in violation of the provisions of this act; *Provided*, That any owner of any domestic animal which has been affected with or exposed to any contagious or infectious disease may dispose of the same after having obtained from the veterinarian a bill of health for such animal.

159. When any **live stock** shall be appraised and **killed** by order of the live stock agents they shall issue to the owner of the live stock so killed a certificate showing the number and kind and general description of animals killed, and the amount to which holder is entitled, and report the same to the auditor of state, and upon presentation of such certificate to the auditor, he shall draw his **warrant** on the treasurer for the amount therein stated, **payable** out of any money appropriated for the live stock indemnity fund.

160. Whenever the **governor** of the state shall have good reason to believe that any dangerous, contagious, or infectious disease has become epizootic in certain localities in other states or territories or counties, or that there are conditions which render such domestic animals from such infected districts liable to convey such disease, he shall by proclamation **prohibit** the **transportation of** any live **stock** of the kind **diseased** into the state, except under such rules and regulations as may from time to time be prescribed by the live stock agents; and all such animals arriving in this state shall be examined without delay by the veterinary surgeon, or the live stock agents.

161. The owners of any public **stock yards** doing business in this state, when requested by the live stock agents, shall appoint, and keep constantly in their employ, at their expense, a competent **inspector** of live stock, whose duty it shall be to daily inspect, with care, all animals brought into the stock yards, in whose employ any such inspector may be, under such rules and regulations as may from time to time be prescribed by the live stock agents; and upon the discharge by such inspector, in such yards, of any animals affected with any malignant, contagious, or infectious disease, he shall direct the manner in which any such diseased animals shall be disposed of, so as to prevent the spread of any such contagious or infectious disease, and for this purpose may cause any such diseased animals to be killed, and the carcasses to be disposed of at the expense of the owner thereof; but in no event shall any such diseased stock be permitted to be driven or shipped out of any such stock yards, except to some rendering establishment, or other suitable place for killing or disposing of such diseased animal, as hereinbefore provided for, and then under such regulations and restrictions as may be necessary to prevent the spread of the disease, on account of which any such animals have been condemned; *Provided*, That the owner of any animal or animals, ordered to be destroyed by any inspector, shall have the right to appeal from any decision of such inspector to the veterinarian or live stock agents, and during the pendency of such appeal the condemned animals shall be kept in strict quarantine, unless the veterinarian shall decide such stock is not so diseased, then said expenses shall be paid by the owner of such stock yards;

And provided further, That no compensation shall be made by the state to the owners of diseased live stock found in public stock yards, and destroyed as herein provided. The inspector of live stock in any public stock yards in this state shall, on demand of the owner of any live stock passing through any such stock yards, furnish to said owner a bill of health, for any live stock by him inspected, as hereinbefore required, and found to be healthy.

162. The live stock **agents,** or **veterinarian,** shall have the **power** to call upon any sheriff, under sheriff, deputy sheriff, or constable to execute their orders; and such officers shall obey the orders of said agents, or veterinarian, and the officers performing such duties as provided for by this act shall receive compensation therefor, prescribed by law for like services, to be paid as other expenses of said commission, as hereinbefore provided; and any officer may arrest without a warrant, and take before any magistrate of the county, any person found violating the provisions of this act, and such officers shall immediately notify the county attorney of such arrest, and he shall prosecute the person so offending according to law.

163. Except as otherwise provided in this act, any person who shall **violate,** disregard, or evade, or attempt to violate, disregard, or evade, any of the provisions of this act, or who shall violate, disregard, or evade any of the **rules,** regulations, orders, or directions of the live stock agents, establishing and governing quarantine, shall be deemed guilty of a **misdemeanor,** and upon conviction thereof shall be fined in any sum not less than one hundred ($100) nor more than five thousand ($5,000) dollars.

164. There shall be levied and assessed upon the assessed value of all taxable property in the state in each year one-fourth (¼) of one (1) mill on each and every dollar thereof, to be known as the **live stock** indemnity **fund tax.** Said tax to be assessed and collected in the same manner and at the same time as is now or may be prescribed by law for the assessment and collection of state revenue.

165. It shall be the duty of the county **treasurers** of the several counties to **preserve** the **fund** thus provided for as a separate fund, and to transmit the same as now required by law to the state treasurer, who shall keep the same in a fund to be known as the live stock indemnity fund.

166. For the purpose of this act each one of the live stock agents and the **veterinarian** is hereby authorized and empowered to **administer oaths** and affirmations.

167. That the live stock agents be authorized and directed to **co-operate with** the commissioner of agriculture of the United States, or any officer or authority of the **general government,** in the suppression and extirpation of any and all contagious diseases among domestic animals, and in the enforcement and execution of any and all acts of congress to prevent the importation or exportation of diseased cattle, and the spread of infectious or contagious diseases among domestic animals.

168. The **liability** of the state for carrying out the provisions of this act in any two years is **limited** by and shall in no case exceed the amount especially appropriated for that purpose and that period.

Secs. 169 to 186. "An act to regulate and protect **sheep husbandry** in the state of Nebraska, to provide for the appointment of sheep inspectors therein, and to prescribe their duties." 1883, p. 61. In force June 1.

169. Whenever, in any county in this state, a majority of the sheep owners therein shall petition the board of county commissioners of their county for the appointment of a **sheep inspector,** recommended by a majority of petitioners in such county, it shall be the duty of the said board of county commissioners to appoint some suitable, competent person sheep inspector in and for said county.

170. Such person shall be a **resident** of the county for which he shall be appointed. He shall, before entering upon the duties of his office, take the **oath** prescribed for other county officers, in chapter ten, Compiled Statutes of the State of Nebraska [ch. 38, this statute], and shall give a **bond** in the sum of one thousand dollars, payable to the county in which he shall be appointed, with two sureties, to be approved by the county clerk of such county, which bond shall be filed and recorded in the office of such clerk.

171. Every inspector shall **hold** his **office** for two years from the date of his appointment, and until his successor is duly appointed and qualified.

172. The board of county commissioners of each county where the office of sheep inspector exists shall by appointment fill all **vacancies** occurring in said office or about to occur by reason of the expiration of the term of any incumbent; *Provided*, That if a majority of the sheep owners of any such county shall petition the board of county commissioners thereof to abolish said office, such board may in its discretion abolish the same, to take effect upon the expiration of the term of the then incumbent.

173. Every sheep **inspector,** upon inspecting any flock of sheep, and finding the same or any part thereof infected with what is commonly called the "scab," or any other contagious disease, shall, in the manner hereinafter prescribed, have **power** to define, limit, and restrict the range and feeding grounds of such sheep, for such time and in such manner as to him may seem necessary to protect all neighboring flocks from becoming likewise infected, and notify the owners or agent of the diseased flock; then he shall, within ten days from the day of inspection, commence the curing of the same, and it shall be the **duty** of the inspector to inspect said flock every twenty days until the flock is found cured, for which he shall receive the same compensation as provided in section 53 [sec. 180] and all persons who may be selected arbitrators under this act shall, in conjunction with such inspector, have like power.

174. Every inspector shall keep a book, to be known as the "**Inspection Record,**" in which he shall enter and record all his official acts and proceedings. Such record shall particularly show the name of the owner of every flock of sheep inspected, when the same was inspected, the result of such inspection, and all orders and directions made in relation thereto.

175. It shall be the **duty** of every sheep inspector, between the 15th day of May and the 15th day of August in each year, to make a careful **inspection,** to be known as the annual inspection, of every flock of sheep kept in his county, and determine whether or not such sheep are free from scab or other contagious disease.

176. It shall **further** be the **duty** of every inspector, upon information and complaint made in writing before any justice of the peace and filed with the inspector, setting forth that any flock of sheep, describing it, within the jurisdiction of such inspector, has the scab or any contagious disease, to forthwith inspect such flock as to the truth of such complaint; and if upon inspection it shall be found such flock is inflicted with a contagious disease, the owner shall pay the expense of such inspection, otherwise the person lodging the complaint shall pay such costs, and shall be liable in a civil action therefor.

177. Upon the arrival of any flock of sheep in any county in this state in which there is a sheep inspector, it shall be the **duty** of the inspector in such county, having knowledge of such arrival, to forthwith inspect such flock as to whether or not it is free from scab or other contagious disease; *Provided*, If the owner of such flock or his agent shall, immediately upon such arrival, report the same to the sheep

inspector, and at the same time exhibit to such inspector the certificate of any duly appointed and qualified sheep inspector in the state, that such flock has been by him duly inspected within one month of such arrival and found free from every contagious disease, then such inspection shall not be necessary.

178. Upon inspecting any flock of sheep it shall be the duty of the inspector to require of the owner of such flock, or, in his absence, of his agent, true answers to the following questions: *First.* The name of the owner of such flock, his earmark and brand. *Second.* The increase of such flock by purchase or trade since the last inspection *Third.* From whom such increase has been received. *Fourth.* From what county and state such increase came. *Fifth.* Whether or not any part of them was, at the time inspected, with the scab or any contagious disease, and, if so, what disease. Such owner or agent, as the case may be, shall make true answers to all such questions, and subscribe the same and make oath thereto, all of which shall be entered in the inspector's record. The inspector shall have power and is hereby authorized to administer such oath.

179. If upon the inspection of any flock of sheep the inspector shall find the same or any part thereof infected with the scab or any contagious disease, it shall be his duty at once to define, limit, and restrict the range and feeding grounds of such flock, as authorized in section 5 [173] of this act. The inspector shall, at the time of making any order or direction authorized by this act, enter the same in full in his inspection record, and shall at once make out in writing a true copy thereof, and deliver the same to the owner interested, or in his absence to his agent in charge of such flock of sheep, and the owner of said sheep and all persons under him shall fully comply with the terms of the copy so served; *Provided,* If the owner of such sheep, or the person so served with such copy, shall consider the terms thereof unreasonable, he may, within twenty-four hours after receiving the same, so notify the inspector in writing, naming therein some disinterested person, being the owner of one hundred sheep or more, arbitrator to act in review on all matters contained in such order and copy, which person with the inspector shall without delay select some other like person, and the two thus chosen with the inspector shall forthwith make such orders and directions, authorized in section 5 [173] of this act, as to them may seem reasonable and just, and their action in the premises shall be final. Every order and direction shall be entered in full on the inspector's record, and be signed by the arbitrators and inspector making the same, and a true copy thereof served without delay on the owner interested or his agent in charge.

180. The inspector and arbitrators shall receive for their services the following fees and no more, which shall be paid by the owner of the flock inspected, except as otherwise provided in this act: The inspector shall receive for each flock inspected at each annual inspection the sum of one dollar, and in addition thereto the sum of ten cents for every hundred sheep inspected, or fractional part thereof, to be paid by the owner of the flock inspected. For every other inspection, the sum of three dollars per day for each day necessarily employed in such duty. Each arbitrator shall receive three dollars per day for each day necessarily employed in their duties.

181. Any person who shall fail to comply with or shall disregard any order or directions made by any inspector and arbitrators, under the provisions of this act, shall upon conviction be fined in any sum not less than one hundred dollars.

182. Any person or persons owning or keeping any flock or herd of sheep any portion of which flock or herd is diseased with the scab or other contagious disease, shall be liable to any person damaged thereby in double the amount of

damage such person may sustain by reason of such flock or herd or any part thereof being moved or allowed to stray from the premises of the owner of such flock.

183. It shall be **unlawful** for any person or persons having a flock or herd of sheep, any portion of which is infected with the scab or any infectious or contagious disease, to allow such flock or herd or any part thereof to stray or be driven upon the grounds of another without the consent of the occupant thereof in writing, or to allow any such flock or any part thereof to come in **contact,** off his premises, with the sheep of any other person. Every person so offending shall be fined in any sum not less than five dollars nor more than one hundred dollars.

184. It shall be **unlawful** for any person or persons **to bring into** this **state** from without the state any **sheep infected** with the scab or any contagious disease. Every person so offending shall upon conviction thereof be fined in any sum not less than fifty dollars nor more than one hundred dollars, or imprisoned in the county jail not less than one month nor more than three months, or both at the discretion of the court.

185. Every person or persons, being the owner of any sheep, shall cause such sheep, and all of them six months old and upwards, to be suitably **branded** and **ear-marked** and so kept branded and ear-marked, which brand and ear-mark shall be made of record in the office of the county clerk of the county in which such sheep are kept. Every person failing to comply with the provisions of this section shall, upon conviction thereof, be fined in any sum not less than five nor more than fifty dollars.

186. **No property** shall be **exempt** from sale under execution issued upon any judgment obtained under any of the provisions of this act.

Secs. 187 to 193. "An act to prevent **sheep** and other domestic animals from being killed by **dogs.** 1887, p. 156. In force June 1.

187. That the **owner** or owners of a dog or dogs shall be **liable** in an action **for** all damages that may accrue to any person or persons by reason of such **dog** or dogs **killing,** wounding, worrying, or chasing any **sheep** or other domestic animal belonging to such person or persons; and the damage done may be recovered in any court having jurisdiction of the amount claimed.

See **20,** 448 (30 N. W., 421).

188. If two or more dogs owned by different **persons** shall kill, wound, chase, or worry any sheep or other domestic animal, such persons shall be **jointly** and severally **liable** for all damage done by such dogs.

189. The **municipal** authorities of any county, city, town, or township shall have authority by ordinance or resolution, entered at large on the proper journal or record of proceedings of such municipality, to impose a license **tax** of not more than five dollars for each dog, **on** the owner or harborer of any dog or **dogs,** which license tax shall constitute a special fund for the payment of all damages done by dogs within the limits of the body imposing the same, to be paid under such regulations as shall be provided by such ordinance or resolutions.

190. Any person shall have the right to **kill** any **dog** found **doing** any **damage** aforesaid to any sheep or domestic animal, or shall have just and reasonable ground to believe that such dog has been killing, wounding, chasing, or worrying such sheep or animal, and no action shall be maintained for such killing.

191. It shall be the duty of every owner or owners of any **dog** or dogs to securely place upon the neck of such dog or dogs a good and sufficient **collar** with a metallic plate thereon, on which shall be plainly inscribed the name of such owner. It shall be lawful for any person to kill any dog found running at large on whose neck there is no collar as aforesaid, and no action shall be maintained for such killing.

192. Every person who shall harbor about his or her premises a collarless dog for the space of ten days, shall be taken and held as the owner and shall be liable for all damages which such dog shall commit.

193. The owner or owners of any dog or dogs who shall permit the same to run at large for ten days after this act shall take effect, without such collar as hereinbefore described being securely placed upon the neck of such dog or dogs, shall be deemed guilty of a misdemeanor, and fined in any sum not exceeding twenty-five dollars, which when collected shall be paid to the county treasury for the benefit of the school fund of the county in which the fine was imposed.

Sec. 194. "An act to prevent the commencement of the round-up of cattle until after the fifteenth day of May of each year, and providing a penalty for the violation of the same." 1883, p. 60. In force February 26.

194. That in any portion of the state where it is customary round-up cattle for the purpose of branding, marketing, driving, or selling cattle, it shall be unlawful for any person or person or persons to commence said round-up between the first day of December and the fifteenth day of May of each year, and any one violating the provisions of this act shall forfeit and pay a fine of not less than five hundred dollars, to be recovered before any court having jurisdiction, upon the information and complaint of any person.

Secs. 195 to 200. "An act to protect bee husbandry from foul brood and other infectious and contagious diseases." 1885, p. 69. In force June 5.

195. It shall be unlawful for any person to keep or have in possession in this state any honey bees, brood comb, or honey known to possess or to be infected with the disease known as "foul brood," or with any other infectious or contagious disease peculiar to bees or honey, contrary to the provisions of this act, or to keep or have in possession any bee hive or other receptacle in which any foul brood, diseased bees, or infected honey, is known to have been kept. Every person violating any provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than ten dollars nor more than one hundred dollars for each offense, or be confined in the county jail not more than thirty days.

196. Any honey bees, brood comb, or honey owned or kept or found in this state known to be affected with foul brood or other infectious or contagious disease, and any bee hive or other receptacle in which any bees, brood comb, or honey shall have been kept, known to have been infected with any infectious or contagious disease, shall be destroyed immediately and completely by burning, by the owner thereof, or the person or persons in whose possession the same may be.

197. Every person owning or having in his or her possession, or under his or her control any honey bees, brood comb, honey, bee hive, or receptacle, or apparatus known to be infected with any infectious or contagious disease peculiar to honey bees or honey, or in which any diseased bees or infected honey shall have been kept, who shall not immediately cause the same to be destroyed as provided in section 2 [196] of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than ten dollars nor more than one hundred dollars for each offense, or be imprisoned in the county jail not more than thirty days for each offense.

198. Every person owning or keeping honey bees in this state shall cause all bees owned or kept by him or her to be inspected at his or her own expense as hereinafter provided. Every person neglecting or refusing to cause all such bees to be duly inspected as hereinafter provided shall be deemed guilty of a misdemeanor, and shall pay a fine of not less than ten dollars nor more than one hundred dollars for each offense upon conviction thereof; *Provided,* That if upon inspection of any

colony or colonies of bees the disease of foul brood or other infection or contagion shall be found to exist, and such inspector shall be of the opinion that by proper treatment such disease or contagion or infection may be removed, he shall so certify officially in his certificate of inspection, and the owner or keeper of such bees shall be entitled to keep such bees for the period of six months for treatment, and at the expiration of said time if such disease or infection or contagion shall not be eradicated, such bees shall be destroyed as hereinbefore provided, and any person or persons having in possession any brood comb, bee hive, honey, or apparatus used in connection with bee culture, found in like manner to be infected with foul brood or infectious or contagious disease, such person shall be allowed the period of thirty days in which to disinfect the same, but no longer, and if at the end of said period of thirty days said disinfection shall not have been complete, such brood comb, bee hive, honey, or apparatus shall be destroyed as hereinbefore provided.

199. Every person engaged in bee keeping in this state, either as owner, agent, or lessee in infected districts, shall cause to be inspected at least once in each year each and every brood or colony of bees, brood comb, and honey in his or her possession or under his or her control, and procure a **certificate of** such **inspection** showing the true condition of each and every one of the above named articles in his or her possession as to the existence of foul brood or other infectious or contagious disease, in duplicate, one of which duplicates shall be left with such person, and the other shall be filed in the office of the county clerk of the county where such bees or honey or brood comb is kept.

200. Upon the application of the Nebraska State Bee Keepers' Association, or other person or persons interested in bee culture residing in any county in the state, the governor may appoint a suitable person resident of said **county inspector** of bees and honey for said county, who shall be sworn to perform the duties of such office faithfully and impartially, whose duty it shall be to inspect all bees, brood comb, and honey, within his said county when called upon for that purpose, and shall be entitled to receive the sum of two dollars for each day or part of a day necessarily employed in making such inspection, to be paid by the owner or agent or lessee in whose possession such bees, brood comb, or honey may be when inspected. Such inspector shall make certificates in duplicate, and shall give one to the owners or persons in charge of such bees, brood comb, or honey, and file the other in the office of the county clerk as aforesaid.

Secs. 201 to 206. "An act creating a board of **fish commissioners** for the propagation and distribution of fish in the public waters of Nebraska." 1879, p. 154. In force June 1.

201. That the **governor** shall nominate, and by and with the advice and consent of the senate **appoint** three resident citizens of the state of Nebraska, who shall constitute a board of **fish commissioners,** who shall hold such office for the term of three years from the date of such appointment and until the appointment of their successors; *Provided,* That the persons first appointed under this act shall hold such office one, two, and three years, respectively, whose respective terms of office shall be designated in such appointment, and thereafter the governor shall in like manner fill all vacancies in said board during the remainder of the term.

202. The **board** may **adopt by-laws** for its government not inconsistent with the laws of the state. The person whose unexpired term of office is the shortest shall preside at the business meetings of the board. In the determination of all questions by the board, two members must concur.

203. The members of the board shall receive **no compensation** for services performed, but they shall be reimbursed actual and necessary expenses incurred in the discharge of the duties of the commission, not to exceed the sum of $500 in any one year, out of money appropriated for that purpose.

204. The board shall have the entire charge and supervision of all **public waters** pertaining to the collection, propagation, cultivation, distribution, and protection of fish in this state. It shall have control of all property of the state obtained or held for the purposes contemplated by this act. It shall receive all fish and fish spawn donated to the state by the United States fishery commission or from other sources or persons, or purchased by the state. It may establish hatching boxes, etc., for the preservation and hatching of spawn and fry, and in the most practical and economical manner procure and distribute fish in the public waters of this state, and adopt such other means as shall in its judgment best promote the increase and preservation of food fishes.

205. The commissioners may take, or cause to be taken, under the direction of the board, any fish at any time for the purpose of **fish culture** or for scientific observation. They shall give special attention to the enforcement of the laws of the state relative to the protection of fish and fisheries in the state.

206. The **board** shall annually, on or before the first day of January in each year, **report** its transactions, with an account in detail of all its receipts and expenditures, to the governor, also of all spawn and fish taken or received and distributed, giving time, place, and sources from which received, and such other matters as appertain to the fishery interests of the state.

Secs. 207 to 211. "An act to provide for the destruction of **grasshoppers.**" 1887, p. 154. In force February 19.

207. That the supervisors of each road district in this state shall, at the time when the grasshoppers shall have been hatched out and before the same shall become full fledged and able to fly, notify each able-bodied male resident of his district, between the ages of sixteen and sixty years, to perform two days' labor, at such time and at such place and in such manner as shall by said supervisor be deemed most efficient, in the **destruction of** the grasshopper. Said notices shall be given in the same manner as is provided by law for the notice to work upon the public highways.

208. **Cities** of the first and second class shall be **governed by** the provisions of this **act**; and it shall be the duty of the mayor of such cities to appoint not exceeding two supervisors for each ward to oversee the labor to be performed under the provisions of this act.

209. **[Additional labor.]**—In case it shall appear that two days' work is not sufficient to destroy the grasshoppers in any district or ward, and it shall further appear that more time can be profitably employed in the destruction of the grasshopper, the supervisors of such ward or road district may require from the persons liable to the provisions of this act not exceeding ten days' labor in addition to the time hereinbefore mentioned, and it shall be the duty of such supervisor to give to each person who shall have performed labor under the provisions of this section a receipt for the number of days' labor performed, and the supervisor shall upon oath report to the city or county authorities the names and amount of labor performed by each person.

210. It shall be the duty of all persons subject to the provisions of this act to attend when notified as herein provided, and labor under the direction of the supervisor of their respective district or ward. Any person who after being notified shall **refuse**, neglect, or fail to **comply with** the provisions of this **act** shall **forfeit** and pay to the county or city treasurer, as the case may be, the sum of ten dollars, together with costs of suit, which sum shall be collected by suit before any justice of the peace within the county, in an action to be brought in the name of the city or county.

211. The **supervisor** shall **report**, under oath, to the city or county authorities the names of all persons who shall have refused or failed to comply with the provisions of this act.

Secs. 212 to 215. "An act to provide for the payment of **bounties** for the destruction of **wild animals** in the state of Nebraska."* 1877, p. 213. In force June 1.

212. That any person killing wolves, wild cats, or coyotes within the boundaries of the state of Nebraska, and presenting the **scalps** of the same, with the two ears and face down to the nose, to the county clerk of the county in which the same were killed, with satisfactory proof upon oath that the same were killed within the boundaries of the state of Nebraska, shall be entitled to the following **bounties**: for every wolf so killed, one dollar; for every wild cat so killed, one dollar; for every coyote so killed, one dollar. Certificates of such bounties, when so allowed, shall be issued by the county clerk to the person entitled thereto, and upon the same being filed with the auditor of public accounts the said auditor shall draw his warrant on the treasury of the state against the general fund, for the amount of such certificate, in favor of the person named therein or his assignee.

213. It shall be the duty of the **county clerk** to give such persons, on receiving said scalps, a **certificate** of the number and kind of such scalps accepted by him for bounty, and deface such scalp by cutting the same in two parts so as to separate the two ears, and shall keep a record of the number and kind by him certified and destroyed.

214. All **scalps** upon which bounties are claimed shall be **presented** to the clerk of the county in which the animals were taken and killed, and the applicant for bounty will be required by the said clerk to make his statement under **oath** as to where the said animals were taken and killed.

215. Any person driving, baiting, **enticing**, bringing or taking any of the **animals** mentioned in this act from outside the boundaries of this state, or from any one unorganized territory in this state, into any organized county thereof **for** the purpose of procuring **bounties** thereon, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a **fine** of not less than twenty-five nor more than one hundred dollars, for each and every offense so committed.

Sec. 216 to 222. "An act to provide for the payment of **bounties** for the destruction of **wild animals** in the state of Nebraska."† 1879, p. 162. In force June 1.

216. That any person or persons killing wolves, wild cats, coyotes, or mountain lions within the boundaries of such counties as may at any election, by a vote of the majority of electors voting, to determine as hereafter provided, and presenting the **scalps** of the same, with the two ears and face down to the nose, to the county clerk of the county in which the same were killed, with satisfactory proof in writing, upon oath, that the same were killed within the boundaries of the aforesaid counties, shall be entitled to the following **bounties**: For every wolf so killed, three dollars; for every wild cat so killed, one dollar; for every coyote so killed, one dollar; for every mountain lion so killed, three dollars. Certificates of such bounties, when so allowed, shall be issued by the county clerk to the person entitled thereto, and upon the presentation of such certificates to the county treasurer said treasurer shall pay to the holder of such certificate the amount named therein out of the county general fund.

As amended 1885, p. 91.

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* It is a question if this act is not repealed by implication by the act of 1879 following, but the latter does not expressly repeal it.

† Probably intended to repeal preceding act, but does not do so expressly.

217. It shall be the duty of the county clerk to give such person or persons, on receiving said scalps, a certificate of the number and kind of such scalps accepted by him for bounty, and deface such scalps by cutting the same in two parts, so as to separate the two ears, and shall keep a record of the number and kind by him certified and destroyed.

218. All scalps upon which bounties are claimed shall be presented to the clerk of the county in which the animals were taken and killed, and the applicant for bounty will be required by the said clerk to make his statement in writing, under oath, as to where the said animals were taken and killed, and any person making a false statement under oath as provided in this act, shall be liable to prosecution for perjury, and suffer the penalties of the same as provided by the laws of this state.

219. Any person or persons driving, baiting, enticing, bringing, or taking any of the animals mentioned in this act from outside the boundaries of such counties as are provided in this act, for the purpose of procuring bounties thereon, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five nor more than fifty dollars for each and every offense so committed.

220. Upon the petition of fifty *taxpayers of any county, to the county commissioners or county board, favorable to granting bounties for the destruction of wild animals, as provided in section one of this act, it shall be the duty of said county commissioners or county board to present the prayer of the said petitioners to the electors of such county at the next succeeding election.

* Changed from "freeholders" 1885, p. 92.

221. The voting on the aforesaid proposition shall be by ballot, the ballots having written upon them, "For bounties," or "Against bounties," and the votes to be canvassed as other votes are canvassed in precinct elections, and if a majority of the votes cast at such election be in favor of the proposition as contained in this act, the same shall be in effect within ninety days after such election.

222. Any county desiring to be released from the paying of bounties, as provided in this act, may revoke the same by the same authority and manner of procedure as provided in section five of this act, for the establishment of the same.

Sec. 223. "An act to prevent the chasing and destruction of deer by hounds in certain counties of the state of Nebraska." 1873 (Gen. Stat.), p. 90. In force February 27.

223. If any person or persons within the counties of Burt, Washington, Douglas, Sarpy, Cass, Saunders, and Dodge shall chase or pursue any deer with any hound or dog, such person or persons, on conviction thereof before any court of competent jurisdiction, shall pay a fine of twenty dollars or be confined in the county jail for a period of not less than ten nor more than twenty days, at the discretion of the court, and shall pay costs of prosecution. Such fines shall be paid to the school fund of the county in which such offense was committed.

CHAPTER 3.—APPORTIONMENT.

CONGRESSIONAL.

Sec. 224. "An act for the apportionment of and designation of **congressional districts.**" 1891, p. 69. In force August 1.* Repealing secs. 3-6, Comp. Stats. 1887.

224. That the state of Nebraska be and hereby is divided into **six (6) districts** of representatives to the congress of the United States, each of which districts shall be entitled to elect one (1) representative. And the limits and designations shall be as hereinafter provided: The counties of Cass, Otoe, Nemaha, Richardson, Pawnee, Johnson, and Lancaster shall constitute the **first** (1st) district. The counties of Sarpy, Douglas, and Washington shall constitute the **second** (2d) district. The counties of Burt, Thurston, Dakota, Dixon, Cuming, Dodge, Colfax, Stanton, Wayne, Cedar, Knox, Pierce, Madison, Platte, Nance, Boone, Antelope, and Merrick shall constitute the **third** (3d) district. The counties of Saunders, Butler, Seward, Saline, Gage, Jefferson, Thayer, Fillmore, York, Polk, and Hamilton shall constitute the **fourth** (4th) district. The counties of Hall, Adams, Webster, Franklin, Kearney, Phelps, Harlan, Gosper, Furnas, Red Willow, Frontier, Hitchcock, Hayes, Perkins, Chase, Dundy, Nuckolls, and Clay shall constitute the **fifth** (5th) district. The counties of Sioux, Scott's Bluff, Banner, Kimball, Dawes, Box Butte, Cheyenne, Sheridan, Deuel, Cherry, Grant, Arthur, Keith, Lincoln, McPherson, Hooker, Thomas, Logan, Dawson, Custer, Blaine, Brown, Keya Paha, Rock, Loup, Holt, Garfield, Valley, Sherman, Buffalo, Howard, Greeley, Wheeler, and Boyd shall constitute the **sixth** (6th) district.

Following section formed section 5, p. 56, Laws 1882 (special session):

225. The **representatives** provided for in this act shall be **elected** in accordance with the laws of the United States.

JUDICIAL.

Secs. 226 to 228. "An act to apportion the state into **judicial districts**, and for the appointment and election of officers thereof." 1891, p. 70. In force March 30.

226. The state of Nebraska shall be divided into **fifteen** judicial district, as follows: **First** judicial district shall consist of Richardson, Nemaha, Johnson, Pawnee, Gage, and Jefferson counties. **Second** district—Otoe and Cass counties- **Third** district—Lancaster county. **Fourth** district—Douglas, Sarpy, Washington, and Burt counties. **Fifth** district—Saunders, Seward, Butler, York, Hamilton, and Polk counties. **Sixth** district—Dodge, Colfax, Platte, Merrick, and Nance counties. **Seventh** district—Saline, Fillmore, Thayer, Nuckolls, and Clay counties. **Eighth** district—Cuming, Stanton, Dixon, Dakota, Cedar, and Thurston counties. **Ninth** district—Wayne, Madison, Antelope, Pierce, and Knox counties. **Tenth** district—Adams, Webster, Kearney, Franklin, Harlan, and Phelps counties. **Eleventh** district—Boone, Hall, Wheeler, Greeley, Garfield, Loup, Valley, Howard, Blaine, Thomas, Hooker, and Grant counties. **Twelfth** district—Buffalo, Dawson, Custer, and Sherman counties. **Thirteenth** district—Lincoln, Logan, Keith, Cheyenne, Deuel, Scott's Bluff, Kimball, Banner, McPherson, Arthur, and Perkins counties. **Fourteenth** district—Gosper, Furnas, Frontier, Red Willow, Hayes, Hitchcock, Chase, and Dundy counties. **Fifteenth** district—Holt, Rock, Brown, Keya Paha, Cherry, Sheridan, Dawes, Sioux, Box Butte,

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* See explanation in preface.

and the unorganized territory. *Provided*, That in the Fourth district there shall be seven judges of the district court; that in each of the following districts, to-wit, First (1st), Fifth (5th), Sixth (6th), Eleventh (11th), and Fifteenth (15th) districts, there shall be two (2) judges of the district court; that in the Third (3d) district there shall be three (3) judges of the district court, and in each of the other of the said districts there shall be one (1) judge of the district court. All judges shall be elected for the term of, and hold their office for, four (4) years from and after the first (1st) day of January next succeeding their election. The said judges shall be elected at the general election to be held in November, A. D. 1891, and every four (4) years thereafter. Such judges shall have equal power, and shall each perform such duties as are now provided for by law, or such as may hereafter be imposed upon them by law, and it shall be the duty of such judges to so divide and arrange the work of said court between them that the trial of causes may be speedy. In each district having more than one (1) judge of the district court there shall be drawn, in the manner now provided by law, a panel of forty-eight (48) **jurors** to serve as jurors in such court; *Provided*, That in any county in such districts where such number of jurors may not be required, the judges may by appropriate rule provide for the drawing of a less number; *And provided further*, When there shall be more than two (2) judges of the district court in any one district, they may provide by appropriate rule for the drawing of a greater number of jurors.

227. The **judges** now in **office** shall **hold** their positions, and perform the duties of their office in the districts hereby created, in which they may reside, until the expiration of the terms for which they were elected.

228. The **governor** shall **appoint judges** to fill all vacancies created by this act, including the additional judges as provided in section one of this act, who shall hold their office until the next general election, when such vacancies shall be filled by election in same manner as such officer is elected in other districts.

The legislature has power to thus increase the number of judges. **18**, 416 (25 N. W., 585).

LEGISLATIVE.

SECS. 229 and 230. "An act to distribute the state into **senatorial and representative districts**, and for the apportionment of senators and representatives, and to fix the number of the same, and to repeal sections 1 and 2 of chapter 5 of the Compiled Statutes." 1887, p. 87. In force March 31.

229. That the senate shall consist of thirty-three members, and the house of representatives shall consist of one hundred members.

230. That the state of Nebraska shall be formed into senatorial and representative **districts**, and the senators and representatives shall be apportioned as follows:

SENATORIAL DISTRICTS.

District No. 1 shall consist of the counties of Richardson and Pawnee, and be entitled to one senator. District No. 2 shall consist of the counties of Nemaha and Johnson, and be entitled to one senator. District No. 3 shall consist of the county of Otoe, and be entitled to one senator. District No. 4 shall consist of the county of Cass, and be entitled to one senator. District No. 5 shall consist of the counties of Saunders and Sarpy, and be entitled to one senator. District No. 6 shall consist of the county of Douglas, and be entitled to three senators. District No. 7 shall consist of the counties of Cuming and Burt, and be entitled to one senator. District No. 8 shall consist of the counties of Dixon, Dakota, Knox, Cedar, and Thurston, and be entitled to one senator. District No. 9 shall consist of the counties of Antelope, Boone, and Greeley, and be entitled to one senator. District No. 10 shall consist of the counties of Washington and Dodge, and be entitled to one senator.

District No. 11 shall consist of the counties of Wayne, Stanton, Madison, and Pierce, and be entitled to one senator. District No. 12 shall consist of the counties of Platte, and Colfax, and be entitled to one senator. District No. 13 shall consist of the counties of Holt, Garfield, Wheeler, and the unorganized territory north of Holt and Keya Paha, and be entitled to one senator. District No. 14 shall consist of the counties of Brown, Keya Paha, Cherry, Sheridan, Dawes, Box Butte, and Sioux, and be entitled to one senator. District No. 15 shall consist of the counties of Custer, Valley, Loup, and Blaine, and be entitled to one senator. District No. 16 shall consist of the counties of Buffalo and Sherman, and be entitled to one senator. District No. 17 shall consist of the counties of Hall and Howard, and be entitled to one senator. District No. 18 shall consist of the counties of Polk, Merrick, and Nance, and be entitled to one senator. District No. 19 shall consist of the counties of Butler and Seward, and be entitled to one senator. District No. 20 shall consist of the county of Lancaster, and be entitled to two senators. District No. 21 shall consist of the county of Gage, and be entitled to one senator. District No. 22 shall consist of the county of Saline, and be entitled to one senator. District No. 23 shall consist of the counties of Jefferson, and Thayer, and be entitled to one senator. District No. 24 shall consist of the counties of York, and Fillmore, and be entitled to one senator. District No. 25 shall consist of the counties of Clay, and Hamilton, and be entitled to one senator. District No. 26 shall consist of the counties of Nuckolls, Webster, and Franklin, and be entitled to one senator. District No. 27 shall consist of the county of Adams, and be entitled to one senator. District No. 28 shall consist of the counties of Kearney, Phelps, and Harlan, and be entitled to one senator. District No. 29 shall consist of the counties of Furnas, Red Willow, Hitchcock, Dundy, Gosper, Frontier, Chase, and Hayes, and be entitled to one senator. District No. 30 shall consist of the counties of Dawson, Lincoln, Keith, Cheyenne, Logan, and the unorganized territory west of Blaine and Logan, and be entitled to one senator.

That part of the act providing for representative districts which relates to Sarpy county is void, not having passed both houses; Sarpy county therefore retains its representation under the act of 1881. **24,** 586 (39 N. W., 612).

REPRESENTATIVE DISTRICTS.

District No. 1 shall consist of the county of Richardson, and be entitled to three representatives. District No. 2 shall consist of the county of Pawnee, and be entitled to two representatives. District No. 3 shall consist of the county of Nemaha, and be entitled to two representatives. District No. 4 shall consist of the county of Johnson, and be entitled to one representative. District No. 5 shall consist of the counties of Nemaha and Johnson, and be entitled to one representative. District No. 6 shall consist of the county of Otoe, and be entitled to two representatives. District No. 7 shall consist of the county of Cass, and be entitled to two representatives. District No. 8 shall consist of the counties of Cass and Otoe, and be entitled to one representative. District No. 9 shall consist of the county of Sarpy, and be entitled to one representative. District No. 10 shall consist of the county of Douglas, and be entitled to nine representatives. District No. 11 shall consist of the county of Washington, and be entitled to one representative. District No. 12 shall consist of the county of Burt, and be entitled to one representative. District No. 13 shall consist of the counties of Burt and Washington, and be entitled to one representative. District No. 14 shall consist of the county of Dodge, and be entitled to two representatives. District No. 15 shall consist of the county of Cuming, and be entitled to one representative. District No. 16 shall consist of the counties of Cuming, Dakota, and Thurston, and be entitled to one representative. District No. 17

shall consist of the counties of Wayne and Stanton, and be entitled to one representative. District No. 18 shall consist of the county of Dixon, and be entitled to one representative. District No. 19 shall consist of the counties of Cedar and Pierce, and be entitled to one representative. District No. 20 shall consist of the county of Knox, and be entitled to one representative. District No. 21 shall consist of the county of Antelope, and be entitled to one representative. District No. 22 shall consist of the county of Boone, and be entitled to one representative. District No. 23 shall consist of the county of Madison, and be entitled to one representative. District No. 24 shall consist of the county of Platte, and be entitled to one representative. District No. 25 shall consist of the counties of Platte and Nance, and be entitled to one representative. District No. 26 shall consist of the county of Colfax, and be entitled to one representative. District No. 27 shall consist of the county of Saunders, and be entitled to two representatives. District No. 28 shall consist of the county of Butler, and be entitled to two representatives. District No. 29 shall consist of the county of Seward, and be entitled to two representatives. District No. 30 shall consist of the county of Lancaster, and be entitled to five representatives. District No. 31 shall consist of the county of Saline, and be entitled to two representatives. District No. 32 shall consist of the county of Gage, and be entitled to three representatives. District No. 33 shall consist of the counties of Gage, and Saline, and be entitled to one representative. District No. 34 shall consist of the county of Jefferson, and be entitled to one representative. District No. 35 shall consist of the county of Thayer, and be entitled to one representative. District No. 36 shall consist of the counties of Thayer and Jefferson, and be entitled to one representative. District No. 37 shall consist of the county of Fillmore, and be entitled to two representatives. District No. 38 shall consist of the county of York, and be entitled to two representatives. District No. 39 shall consist of the county of Polk, and be entitled to one representative. District No. 40 shall consist of the county of Merrick, and be entitled to one representative. District No. 41 shall consist of the county of Hamilton, and be entitled to two representatives. District No. 42 shall consist of the county of Clay, and be entitled to two representatives. District No. 43 shall consist of the county of Nuckolls, and be entitled to one representative. District No. 44 shall consist of the county of Webster, and be entitled to one representative. District No. 45 shall consist of the county of Adams, and be entitled to one representative. District No. 46 shall consist of the counties of Webster and Adams, and be entitled to one representative. District No. 47 shall consist of the county of Hall, and be entitled to two representatives. District No. 48 shall consist of the county of Howard, and be entitled to one representative. District No. 49 shall consist of the counties of Garfield, Greeley, Wheeler, Loup, and Blaine, and the unorganized territory west of Blaine, and be entitled to one representative. District No. 50 shall consist of the county of Holt, and be entitled to two representatives. District No. 51 shall consist of the county of Brown, and be entitled to one representative. District No. 52 shall consist of the counties of Cherry and Keya Paha, and be entitled to one representative. District No. 53 shall consist of the counties of Sheridan, Dawes, Box Butte, and Sioux, and be entitled to one representative. District No. 54 shall consist of the counties of Lincoln, Cheyenne, and Keith, and the unorganized territory west of Logan, and be entitled to one representative. District No. 55 shall consist of the county of Valley, and be entitled to one representative. District No. 56 shall consist of the counties of Custer and Logan, and be entitled to two representatives. District No. 57 shall consist of the county of Sherman, and be entitled to one representative. District No. 58 shall consist of the county of Buffalo, and be entitled to two representatives. District No. 59 shall consist of the county of Dawson, and be entitled to one representative. District No. 60 shall consist of the county of Kearney, and be entitled to one representative. District No. 61 shall consist of the county of Franklin, and be entitled to one representative. District No. 62 shall consist of the county of Harlan, and be entitled to one representative. District No. 63 shall consist of the county of Phelps, and be entitled to one representative. District No. 64 shall consist of the county of Furnas, and be entitled to one representative. District No. 65 shall consist of the county of Red Willow, and be entitled to one representative. District No. 66 shall consist of the counties of Frontier and Gosper, and be entitled to one representative. District No. 67 shall consist of the counties of Hitchcock, Dundy, Hayes, and Chase, and be entitled to one representative.

CHAPTER 4.—ASSIGNMENTS FOR CREDITORS.

Secs. 231 to 276. "An act regulating voluntary assignments for the benefit of creditors, proceedings thereunder, and to prevent the fraudulent violation of the same." 1883, p. 67. In force June 1.

231. That no voluntary **assignment** for the benefit of creditors hereafter made shall be **valid** unless the same shall be made in conformity to the terms of this act.

The assignment does not prevent the creditor from obtaining judgment but removes the property from his reach by the ordinary process. **18,** 569 (26 N. W., 242). Under control of court. Not void because of provision that assignee may compromise doubtful claims; nor because exemptions retained. **9,** 45 (2 N. W., 359). Fraudulent assignments may be set aside. **7,** 432. Instrument called a chattel mortgage examined and construed to be an assignment but void for non-conformity with assignment law. **20,** 577 (31 N. W., 381). Assignment under law of 1877 sustained. **12,** 168 (10 N. W., 716). Property not subject to attachment or garnishment if assignment valid. **7,** 282. See **29,** 400 (45 N. W. 476). Creditors can be preferred, but not under the assignment law—labor excepted. **19,** 48 (26 N. W., 618).

232. Every such assignment shall be of **all** the **property,** real and personal, of the assignor or assignors therein named, wherever situated, except so much thereof as may be exempt from levy and sale on execution under the general laws of the state.

233. **Real estate** so assigned shall be **described** in the deed of assignment in such manner as would be requisite in an ordinary deed of conveyance thereof, and real estate claimed to be exempt shall be expressly excepted by like description.

234. Personal **property** claimed to be **exempt** shall be separately specified and described as such in the inventory of the assignor or assignors hereinafter required to be made.

235. In every such assignment the **sheriff** and his successor in office of the county in which the assignor resides, or if there be two assignors in which one of them resides, or if there be more than two assignors in which two or more of them reside, shall be named as **assignee.**

Assignee represents assignor, and not the creditors. **13,** 301 (14 N. W., 399).

236. Such assignment shall be in writing, and shall be **executed** and acknowledged in the manner in which a conveyance of real estate is or shall be required to be executed and acknowledged, in order to entitle the same to be recorded. And within twenty-four hours after its execution it shall be **filed** for record in the clerk's office of the county in which the assignee resides. If it shall convey real estate it shall be recorded in the deed record, and entered upon the numerical index in said office, otherwise it shall be recorded in the miscellaneous record. Within thirty days after its execution it shall be filed for record in every other county in this state in which there shall be situate real property conveyed therein, and such assignment shall be recorded in each such county in the manner aforesaid. A failure to file such assignment for record within the time aforesaid in any county in which by the terms of this section it is required to be recorded, shall avoid such assignment as to property situate in such county; and if a failure so to file shall be due to the negligence or misconduct of any assignee appointed under the provisions of this act, such assignee shall be liable to the creditors for the value of all property as to which such assignment shall be so avoided, and may be required to account for the same in all respects as in case of other assigned property, or by any other appropriate remedy.

Execution of deed of assignment includes delivery of the deed. **19,** 355 (27 N. W., 229). Deed of assignment must be executed and acknowledged same as deeds of conveyance. **10,** 513 (7 N. W., 282). An assignment delivered to sheriff while he has a writ of attachment in his hands but not levied takes precedence of the attachment. **18,** 352 (24 N. W., 682).

237. Immediately upon the execution and delivery on any such assignment, the **sheriff** shall take possession of all the assigned estate, and preserve, insure, and safely keep the same for **administration** according to law, and the sheriff and his sureties shall be liable, upon his official bond, for the faithful execution of the trust created by such assignment, for the preservation of such assigned estate, and for the accounting for and paying over of all moneys derived therefrom. He shall, under order of the county judge, inspect the assigned estate, and take all necessary steps to sell or properly dispose of any and all perishable goods or property of said estate.

238. Within ten days after such assignment is made the assignor or assignors executing the same shall make and file in the county judge's office of the county in which the assignee named therein resides, to be recorded in a book to be provided for that purpose, an **inventory** verified by the affidavit of the person or persons making the same, that the same is in all respects full, true, and accurate according to the best of their knowledge and belief, and showing: *First.* All the creditors of the assignor or assignors. *Second.* The place of residence of each creditor, if known to the assignor or assignors, and if not known, that fact must be stated. *Third,* The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account, or otherwise. *Fourth.* The true consideration of the liability in each case, and when and the place where it arose, and whether there has been any renewal or new promise in relation thereto. *Fifth.* Every existing mortgage, judgment, or other security for the payment of any debt or liability of the assignor or assignors. *Sixth.* All property of the assignor or assignors at the date of the assignment which is exempt by law from execution. *Seventh.* All of the assignor's property at the date of the assignment, both real and personal, of every kind, and wherever situated, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property in detail according to the best of the assignor's knowledge.

239. It shall be the duty of the county judge, immediately upon the receipt of such inventory, to fix a day, not more than fifteen days thereafter, for a **meeting of the creditors** of such assignor or assignors at his office for the purpose of choosing an assignee to succeed the sheriff in such trust, and he shall immediately make advertisement of the time and place of such meeting by publication in some newspaper published or of general circulation in such county, and also shall, within two days after the first publication thereof, send a copy of such notice to each creditor mentioned in said inventory, addressed to his place of residence therein named, with postage prepaid. No informality or neglect with reference to such notice shall invalidate any action taken pursuant thereto or to such order. The certificate of the county judge that he has given such notice shall be sufficient evidence thereof.

240. At the time and place fixed in such order, the **creditors**, or so many of them as shall be present in person or by proxy, may proceed by ballot to **choose an assignee** to succeed the sheriff, and the sheriff shall be eligible. At such election each creditor shall be entitled to cast one vote, but no person shall be regarded as chosen unless he shall receive the votes of creditors representing a majority of the gross indebtedness, and shall also have been voted for by one-third of all the creditors; nor shall any creditor be permitted to vote upon any claim against the assignor or assignors unless the same shall be verified by the affidavit of the creditor to be just and reasonable and wholly unpaid to the extent claimed, setting forth the true consideration thereof and that the same is not, to the best of said affiant's knowledge and belief, subject to any legal or equitable recoupment, counter-claim, or set-off which, if allowed, would reduce the debt below the amount claimed.

241. Such **meeting** of the creditors may be **adjourned** from day to day, not

exceeding three days; and should there be a failure to choose an assignee as provided in the preceding section, the sheriff and his successor or successors in office, respectively, shall remain the assignee of the estate.

242. Immediately upon the adjournment of such meeting the sheriff and the **assignee,** if any chosen thereat, shall proceed to make and return to the county court an **inventory** and appraisement of the entire estate assigned, in the manner provided by law for the appraisal of property taken on attachment issued out of the district court.

243. Within forty-eigth hours after such inventory shall be returned and filed, the **assignee** shall enter into an **undertaking** in double the amount of the appraised value of the whole estate, with two or more sureties to the satisfaction and approval of the county judge, conditioned for the faithful discharge of his duties as such assignee. If the assignee fail to give the undertaking within the time aforesaid, his election shall become null, and the estate shall be administered as though no election had been had.

244. The **bond** of the assignee shall be **recorded** in the office of the county clerk, and the record thereof shall have the same force as the record of other official bonds.

245. Immediately on the execution and approval of such bond the **sheriff** shall **deliver** all the personal **property** belonging to such estate to such assignee, and shall execute and deliver to such assignee, as such, a deed of quitclaim of all real estate conveyed by such assignment.

246. Upon the day of the meeting of the creditors the county judge shall fix a day, not more than sixty nor less than thirty days thereafter, within which all **claims** against the assigned estate shall be **filed,** and within which the assignee or assignor, or any creditor, may file any objection, defense, set-off, or counter-claim to any claim which the assignor might or could have opposed to the same had action been brought upon the same before assignment. **Notice** of the time so fixed shall be given in the manner hereinbefore provided for notice of the first meeting of the creditors. Any claim, objection, set-off, or counter-claim not filed on or before the date so named, shall be forever barred from being considered in the settlement of said estate or participating in any dividend therein.

247. On the day following the day fixed under the provisions of the preceding section all **uncontested claims** shall by the county judge be **allowed** and entered of record, with the amounts thereof, in a book to be provided and kept for that purpose. Upon all **contested claims** the county judge shall order pleadings, as nearly as practicable like those in ordinary civil actions in said court, to be summarily made up, and thereupon said cause shall proceed in said court as in ordinary civil actions therein but no such cause shall be continued for a longer time in the aggregate than sixty days from the day so fixed.

248. **Judgment** in said action shall be that such claim or some amount thereof be allowed, or that the same be disallowed, or that the assignee have and recover from the person making the claim a certain amount. If the claim shall be allowed, judgment for costs shall be adjudged against the party or parties contesting the same. If the claim be allowed in part only, the court adjudicating the same shall apportion the **costs** or adjudge them as may be just. If the claim be wholly disallowed, or the assignee recover judgment, costs shall be adjudged against the claimant, but in no case shall the costs be paid out of the assigned estate except as in this act otherwise provided. In such cause the claimant shall be named as plaintiff, and the contestant or contestants as defendant. Judgment in favor of the assignee or for costs shall be collected as in other cases. Whenever any contested

claim shall be finally allowed, or so much thereof as shall be finally allowed, shall be entered of record in like manner as other claims.

249. **No** petition in **error** shall be allowed from the judgment of the county court upon a contested claim, **but** either party may **appeal** therefrom as in other cases. Upon such appeal the cause shall be docketed in the district court within twenty days after the filing of the appeal bond, and shall stand for trial at the next term of the district court thereafter, or at the same term if the court shall be in session at the time it is docketed, and upon the same pleadings upon which the same shall have been tried in the county court; *Provided, however,* That the court may for sufficient reason grant a continuance to either party as in other cases, and may order any pleading to be amended, or allow any pleading or pleadings to be withdrawn, and a motion or demurrer to be filed in lieu thereof. In all other respects the cause shall proceed as nearly as may be as in other cases.

250. Immediately upon the return of the inventory and appraisement, and the approval of the bond of the assignee, if one shall have been chosen by the creditors, the assignee shall proceed to advertise for **sale** and sell the assigned estate in all respects as though the same had been taken on execution issued out of the district court. Real estate so sold shall be conveyed by the assignee to the purchaser or purchasers of the same by a deed or deeds of conveyance executed and acknowledged as in other cases, which shall convey all the interest the assignor had in the property sold at the date of the assignment. Before such conveyance shall be made the proceedings on such sale shall be returned to and confirmed by the district court or judge as in case of sales of real estate on execution, and the court or judge may set said sale aside or make any order in the premises as in case of such sales on execution. No notice of an application to have such sale confirmed need be given to any person, but any party interested may appear and resist the confirmation, and the application may be made by any person interested, and the assignee may be compelled by attachment by the court or judge to make the return with all reasonable dispatch. *Provided, however,* That the creditors at their first meeting may, by a like vote as that required for the election of an assignee, require any portion or all the personal property assigned to be sold at private sale. Upon such request the county judge shall make an order that the personal property described in the request shall be sold by the assignee at private sale, and shall direct the mode of such sale, whether the same, being merchandise, shall be sold at retail or in job lots, or both, or otherwise, and whether upon any or upon what notice or advertisement, and such sale shall be solely for cash. Nor shall any such property be sold at private sale for less than its appraised value, except upon written application of a majority in amount of the claims voted upon the election of the assignee, fixing the price, and on order of the county court. The court shall also direct by order who shall be employed, if any one, to assist at such private sale, and the amount of his or their compensation, but such private sale shall not continue longer than sixty days after the making of the order authorizing the same. At the expiration of such time the remainder of such estate, if any, shall be immediately advertised and sold in the manner hereinbefore provided.

251. Immediately upon the sale of any portion of the estate, the assignee shall **report** to the county court the description or descriptions of the property sold and the amount received for the same, and shall retain such proceeds subject to the order of the court. He shall also make a like report between the first and fifth days inclusive of every calendar month after his appointment.

252. At the expiration of three months from the date of the inventory and appraisement, or sooner if, and as often as, the assignee shall be in the possession of

sufficient funds, the county court shall order a **distribution** of all moneys in the assignee's hands, fixing the amount in dollars and cents to be paid to each person entitled thereto, and thereupon the assignee and his sureties shall become liable to such person therefor absolutely. The court may also enforce obedience to such order by the assignee by attachment for contempt, and may commit him to the common jail of the county, or any other suitable place of confinement and safe keeping, until he shall comply therewith.

253. As soon as the entire estate shall have been converted into money the county court shall make a like order for the **final distribution** thereof, which shall have the same effect and may be enforced in like manner as the order mentioned in the last preceding section.

254. **Moneys** coming into the hands of the assignee shall be **distributed** in the following manner: *First.* To the payment of the fees and allowances of the assignee, county judge, clerks, sheriff, and officers. *Second.* To the payment of any public tax or assessment charged against the assignor or assignors or his or their property. *Third.* To the payment of preferred claims in full. *Fourth.* The balance shall be divided among the creditors, so that the amount paid to each shall bear the same relation to the whole sum to be so divided that the amount of such creditor's claim shall bear to the aggregate amount of all the claims proven.

Amended 1887, p. 98, by inverting order of first two clauses; fees and allowances formerly having been second.

255. If at the time any order of distribution is made there shall be any **contested claim** still being litigated, a **dividend** shall be declared in its favor in all respects as though the same had been finally allowed, but the assignee shall be directed, in the order of distribution, to retain the same in his hands until the litigation shall be finally determined, and he shall retain the same accordingly. When it shall be certified to the county court by the clerk of the court in which any such action is pending, that litigation therein is finally determined, and that the time for appeal or proceedings in error therein has expired, or has been waived, the county court shall make a further order determining the amount of such dividend to which such claimant shall be entitled, if any, and directing the assignee to pay such amount to such claimant and retain the balance of such dividend, if any, to be distributed in the same manner as other funds belonging to the estate.

256. When all the estate has been converted into money, and all the contested claims have been finally determined and the result thereof certified to the county court as aforesaid, the court shall make a **final order** of **distribution**, which shall be immediately obeyed.

257. When the final **order** of distribution shall have been made, and the assignee shall have made return and satisfactory proof that he has obeyed all orders of distribution and paid the money as therein directed, the county judge shall enter an order **discharging** the **assignee** and the sureties upon his official bond from all liability on account of said trust; but before such order shall be made, a time shall be fixed for hearing the matter, and notice thereof shall be given in the manner provided with reference to the first meeting of creditors.

258. The following and no other **fees** and allowances may be allowed and paid out of the assigned estate, viz.: To the attorney or person draughting the deed of assignment, ten dollars; to the county clerk for recording the deed of assignment and bond of assignee, the fees allowed by law for other like services; to the sheriff and appraisers for making and returning the inventory and appraisement, such compensation as may be allowed by the county court, not exceeding two dollars per day each for time necessarily employed; to the county judge for preparing and

serving each notice required to be given by him, including his certificate or proof of service thereof, ten cents, besides postage actually paid; for filing and preserving each paper or document required to be filed or preserved in the matter, five cents; for allowing each uncontested claim and entering the same of record, ten cents; for recording the inventory and appraisement, and any other paper or document required to be entered of record, other than uncontested claims aforesaid, five cents per hundred words, Arabic numerals not being counted in such computation; for making and entering each order of distribution, not exceeding three orders in any one matter of assignment, five dollars; for making and entering any other order in the proceeding, fifty cents; for attending each meeting of the creditors, for each day's attendance, one dollar; for a certified copy of any order made by him, fifty cents; to the clerk of the district court for entering any order respecting the sale of real estate, such fees as are allowed in civil actions for like services; to the publisher of any newspaper for the publication of any notice required to be published in such proceedings, fifty cents per square of unleaded nonpareil type for the first insertion of such notice, and one-half said amount for each subsequent insertion; to the assignee, such sum as may be allowed by the county judge, not exceeding ten per cent on the first $1,000 distributed, and five per cent on the excess, unless at the said first meeting of creditors they shall by a like vote as that for a request for sale of goods at private sale agree with the assignee upon a different sum; to persons employed to assist the assignee in the private sale of personal property ordered to be so sold, such compensation as may have been previously fixed by the county judge, but the aggregate of such allowances shall not exceed the fees and commissions allowed to the assignee; to attorneys for prosecuting or defending any suit by or against the assignee or affecting the assigned estate, such sum as may be agreed upon in writing by a majority in number and two-thirds in amount of the creditors whose claims have been proven at the expiration of the time fixed for proving claims against the estate; to the assignee such sums as may have been necessarily expended for drayage or rent, fuel and lights, and insurance; such judgments for costs as may have been rendered against the assignee in actions prosecuted or defended by him upon the written direction of a majority of the creditors owning two-thirds in amount of the uncontested claims proven and no other.

259. Every such **assignment** shall be **void** against the creditors of the assignor: *First.* If it give a preference of one debt or class of debts over another, except a preference to any person of not more than $100 for labor or wages. *Second.* If it require any creditor to release or compromise his demand. *Third,* If it reserve any interest in the assigned property, or any part thereof, to the assignor or assignors, or for his or their benefit, before his or their existing debts have been paid. *Fourth.* If it confer any power upon the assignee, other or different from those contained in this act. *Fifth.* If the assignor or assignors shall fail to make the inventory required to be made by him or them by this act, within the time required by this act, the assignment shall not be void, but that the county court may by attachment or other proper remedy compel the making and return thereof by the assignor. But an omission of any property, or of the name or claim of any creditor therefor, shall not avoid the assignment.

Debtor may prefer creditors by an independent instrument. **17,** 268 (22 N. W., 698). Preference of *bona fide* creditors not fraudulent. **27,** 526 (43 N. W., 356). **27,** 643 (43 N. W., 40). Does not prevent debtor from preferring his creditors, but if intended as an assignment this law must be followed, **22,** 515 (35 N. W., 394).

260. If the **assignor** or assignors shall have made any **fraudulent conveyance** or disposition of his or their property, or any part of it, or any conveyance of the same, or any part of it, in whole or in part, directly or indirectly for his

or their benefit, the assignee shall, upon the direction in writing of a majority in number of the creditors owning two-thirds in amount of all the claims proven against the estate at the time fixed for proving the same, begin and maintain an action for the purpose of **setting** said conveyance **aside**, or having the same adjudged void, or to recover the property so conveyed; and in such action he shall have all the rights and be entitled to all the remedies of a judgment creditor of the assignor or assignors; and if in such case a like action shall be pending in favor of any creditor or creditors, such assignee shall be substituted as plaintiff. If the assignee shall be unsuccessful in such action, the costs adjudged against him shall be paid out of the assigned estate. If he shall be successful, the property so recovered shall be disposed of as other like property belonging to the assigned estate.

261. The **county judge** may at any time cite the assignee to make an account, and shall do so whenever the assignee neglects or refuse to account at any time when he is required so to do by this act. The county judge may **enforce** his **orders** in the premises by attachment as for contempt, and may punish disobedience thereto by fine and imprisonment, as in other cases of contempt. Upon complaint of any creditor, and upon good cause shown, he may remove any assignee chosen by the creditors and restore the sheriff to the execution of the trust and make all necessary orders in the premises.

262. A **co-partnership** estate may be assigned without including the individual property of the persons composing the co-partnership, or one or more of such persons may include his or their individual estate in such **assignment**; but in such case separate inventories of the property, and creditors of such estate, shall be made and filed as in this act provided; and in such case the failure of the assignment as to one estate shall not affect it as to any other; and in such case the co-partnership estate shall first be applied to the payment of co-partnership debts, and individual estates shall first be applied to the payment of individual debts, and the balance, if any in the latter case, shall be applied to the payment of debts of the former description, while the balance, if any in former case belonging to an individual partner, shall be applied to the payment of his individual debts.

As to right of one partner to make. **15**, 481 (19 N. W., 620).

263. The existence of an assignment, nor the fact that any **creditor** has proven his claim against an assigned estate, shall not affect the right of such creditor to pursue any **remedy** at law or in equity for the collection of his claim against all or any of the assignors or all or any of their estate or property; nor shall the proving of a claim against either an individual or a co-partnership estate affect the right of a creditor to attack the validity of the assignment.

Presentation and proof of a creditor's claim in Illinois under assignment law of that state, is no bar to such a creditor's right of action in Nebraska. **10**, 217 (4 N. W., 1048).

264. The county court may, upon the application of the assignee, or of any creditor, compel, by citation or attachment, the **assignor** or assignors to appear in person forthwith, or at such time as the court may fix, and answer, under oath, such questions as may be put to them, or either of them, concerning the matter of the assignment; and such assignor or assignors may thereupon be fully **examined**, upon oath, as to all matters touching their estate or property, its situation and amount, and as to whether any and what disposition has been made of the same or any part thereof, and as to the names of creditors, their residence, and the amount due each; and may compel the completion or correction of any inventory made by the assignor or assignors, and the delivery of any money, choses in action, or property belonging to the assigned estate to the assignee, and may compel obedience to his orders in the premises, by fine or imprisonment as for contempt as in other cases.

Court can decide what is exempt to the assignor. **17**, 462 (23 N .W., 364).

265. **[Undisclosed Property.]**—The county court may also, when there shall be filed an affidavit by any person interested in the estate, alleging that any person or persons has or have, or that the affiant has, good reason to and does verily believe that any person or persons has or have any property, goods, chattels, bills of exchange, promissory notes, credits, or effects of the assignor or assignors in his or their possession, or under his or their control, or has or have knowledge of any of the property or effects of the assignor or assignors, cite any such person or persons to appear for examination; and such person or persons may be examined, upon oath, in all respects as to such matters as the assignor or assignors may be required to appear and be examined under the provisions of this act; and the court may make any order with respect to any property or effects, found or disclosed to be in the possession or under the control of such person, which he might or could make with respect to property or effects, in the possession of an assignor, and may enforce obedience to his orders in the premises in like manner.

266. The **assignee** shall, from time to time, file in the county court **additional inventory** and valuation of any property coming into his hands, after the filing of any former inventory, which shall be treated as a part of the original inventory and appraisement.

267. Proof may be made of **claims not due,** but in such case a reasonable rebate shall be made in case they do not draw interest, or in case they draw interest at a less rate than may be allowed by law.

268. The **assignee** shall have full **power,** except as in this act otherwise provided, **to sue** for and recover in his own name as assignee all and singular the estate, property, and effects, real and personal, and amounts owing upon choses in action, and to execute and give releases, acquittances, and discharges, and generally to do all manner of things requisite and convenient for the speedy and effectual collection of the estate which the assignor or assignors might or could have made, given, or done if such assignment had not been made.

269. Full authority and **jurisdiction** is hereby conferred upon the **county courts,** and the judges thereof, to execute and carry out the provisions of this act, and said court shall, at all times, be and remain open for the transaction of business under this act.

270. **No appeal or** proceeding in **error** shall lie from any order of judgment in any proceeding hereunder **except** the following, to-wit: *First.* An order allowing or disallowing, in whole or in part, any contested claim. *Second.* An order of distribution. *Third.* An order directing the assignor or assignors, or other persons, to pay money or deliver property to the assignee, *Fourth.* An order directing the sale of property at private sale or fixing the compensation of assistants thereat. *Fifth.* A judgment in any action by or against the assignee. *Sixth.* An order of final settlement discharging the assignee and his sureties. *Seventh.* Any order made by the county judge in proceedings had under the provisions of section 26 [256].

271. An **appeal** under the second, third, fourth, sixth, and seventh subdivisions of the last preceding section may be taken by any person interested in the [e]state, within the same time and upon giving a bond in the same **manner** as in case of an appeal from a judgment in an ordinary civil action in said court. Such appeal shall be docketed within twenty days after the making of the order appealed from, and shall stand for hearing at the next term of the district court, or at the same term if the court be in session when it is docketed. The county judge shall certify so much of the record as may be necessary to a clear understanding of the matter in controversy. The district court shall dispose of the matter summarily, with or without pleadings, and upon hearing such testimony as may be offered, and

shall make such order in the premises as may be just. The clerk shall immediately certify such order to the county court.

Error may be taken to supreme court same as in any other case. **17,** 465 (23 N. W., 464).

272. If a person being insolvent, or in contemplation of insolvency, within thirty days before the making of any assignment makes a sale, assignment, **transfer,** or other conveyance of any description of any part of his property to a person who then has reasonable cause to believe him to be insolvent or in contemplation of insolvency, and that such sale, assignment, transfer, or other conveyance is made with a view to prevent the property from coming to his assignee in insolvency, or to prevent the same from being distributed under the laws relating to insolvency, or to **defeat** the object of or in any way to impair, hinder, impede, or delay the operation and effect of, or to evade any of said provisions, the sale, **assignment,** transfer, or conveyance shall be **void,** and the assignee may recover the property or the assets of the insolvent. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be *prima facie* evidence of such cause of belief.

273. If a person, being insolvent, or in contemplation of insolvency, within thirty days before the making of the assignment, with a view to give a **preference to** a **creditor** or person who has a claim against him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, having reasonable cause to believe such person is insolvent, or in contemplation of insolvency, and that such payment, pledge, assignment, or conveyance is made in fraud of the laws relation to insolvency, the same shall be **void,** and the assignee may recover the property, or the value of it, from the person so receiving it or so to be benefited.

Debtor may prefer a creditor on same day by chattel mortgage if no collusion. **15,** 533 (19 N. W., 630).

274. **[Exception Preference Valid.]**—Nothing in this act contained shall be construed so as to prevent any debtors from paying or securing to be paid any debt not exceeding the sum of one hundred dollars, for clerks' or servants' wages, or from paying or securing any debt which shall have been created within nine months prior to the date of such payment, or securing or to effect any mortgage or security made in good faith to secure any debt or liability created simultaneously with such mortgage or security, provided any such mortgage shall be filed for record in the proper office within thirty days from its date.

275. **[Fraudulent Evasion.]**—Every person who, in contemplation of making an assignment for the benefit of creditors, shall, *First.* Secrete or conceal any property belonging to his estate; or, *Second.* Part with, conceal, destroy, alter, mutilate, or falsify, or cause to be so concealed, destroyed, altered, mutilated, or falsified, any book, deed, document or writing relating to his estate or property; or, *Third.* Remove, or cause to be removed, any such property, or book, deed, writing, or document out of the county, or otherwise dispose of any part thereof with intent to prevent its coming into the possession of the sheriff or assignee, or to hinder, impede, or delay them, or either of them, in removing or receiving the same; or, *Fourth.* Make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with like intent; or, *Fifth.* Spend any property belonging to his estate, in gaming; or, *Sixth.* Willfully and fraudulently, with intent to defraud, conceal from his assignee, or omit from his inventory, any property or effects;

or, *Seventh.* Having reason to suspect that any other person has presented a false or fictitious demand against his estate, shall fail to disclose the same to his assignee within one month after coming to his knowledge or belief; or, *Eighth.* Fraudulently attempt to account for any of his property by fictitious losses or expenses; or, *Ninth.* Within three months, next before the assignment, for the benefit of creditors, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud such person; or, *Tenth.* Within three months next before the assignment for the benefit of creditors with the intent to defraud his creditors, pawn, pledge, or dispose of, otherwise than by transactions made in good faith in the ordinary way of his trade, any of his goods, chattels, or property, which have been obtained on credit and remain unpaid for, shall be deemed guilty of a fraudulent evasion of this act, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not more than seven years.

276. [**Not Retroactive.**]—An act approved February 19, 1877, entitled "An act relating to voluntary assignments for the benefit of creditors, and to the assignees therein named, and the settlement of their accounts," and all acts and parts of acts inconsistent with this act are hereby repealed; but this act shall not affect assignments heretofore made, but estates assigned thereby shall be administered and settled as though the above named act were not repealed.

CHAPTER 5.—ATTORNEYS.

Secs. 277 to 290 formed secs. 1 to 14, ch. 3, R. S. 1866, p. 14.

277. No person shall be **admitted to practice** as an attorney in the supreme and district courts of this state hereafter, unless such person shall have previously studied in the office of a practicing attorney, for the period of two years, and pass a satisfactory examination upon the principles of the common law, under the direction of the court to which application is made, and it is shown to the satisfaction of said court that such applicant sustains a good moral character.

278. The **supreme court** may, on motion, **admit** any practicing attorney of the district court to practice in the supreme court, upon his taking the usual oath of office.

279. Any practicing **attorney** in the courts of record **of another state** or territory, having professional business in either the supreme or district courts, may, on motion, be admitted to practice in either of the courts, upon taking the oath as aforesaid.

280. Every attorney, upon being admitted to practice in the supreme or district courts of this state, shall take and subscribe an **oath** substantially in the following form:

"You do solemnly swear that you will support the constitution of the United States, and the constitution of this state, and that you will faithfully discharge the duties of an attorney and counselor, according to the best of your ability."

Amended and form of oath changed. 1871, p. 107. In force March 7.

281. It is the **duty** of an attorney and counselor—I. To maintain the respect due to the courts of justice and to judicial officers. II. To counsel or maintain no other actions, proceedings, defenses, than those which appear to him legal and just, except the defense of a person charged with a public offense. III. To employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with truth. IV. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secrets of his clients. V. To abstain from all offensive practices, and to advise no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged. VI. Not to encourage the commencement or continuance of an action or proceeding from any motive of passion or interest.

282. An attorney and counselor who is guilty of **deceit** or **collusion** and consents thereto, with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

283. An attorney or counselor has **power**—I. To execute, in the name of his client, a bond for an appeal, certiorari, writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced. II. To bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court. III. To receive money, claimed by his client in an action or proceeding, during the pendency thereof or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

General powers of attorney. **8**, 307. The authority of presumed. **28**, 294 (44 N. W., 452). Ratification by client of acts in commencing suit without authority. **27**, 181, 190 (42 N. W., 1044). No exception being taken to order of judge limiting time of argument, error will not be considered. Argument should be confined to issues. **8**, 159. Oral agreements entered into out of court will not be enforced. **7**, 205. The authority to give notice to an adverse party, of the termination of his agency for another, at least before the commencement of an action, is not among the express or implied powers of an attorney. **11,** 447 (9 N. W., 571).

284. An attorney has a **lien** for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; upon money in his hands belonging to his client, and in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

An attorney in an action may have a lien on money in the hands of the adverse party, and under certain circumstances may be admitted as a party plaintiff in that action for the purpose of protecting and enforcing such lien. **10,** 579 (7 N. W., 322). To entitle attorney to be admitted as party plaintiff it must appear that fees are due him for services in the case. **11,** 521 (9 N. W., 689). Settlement of case by parties before lien filed by attorney, *held* that the attorneys could not intervene and continue litigation. **20,** 206 (29 N. W., 467). Lien cannot be defeated by settlement of parties. **22,** 77 (34 N. W., 72). Lien of attorneys superior to rights of parties. **3,** 168. Lien by agreement for one-half amount recovered cannot be reduced by subsequent recovery of judgment by defendant in action against plaintiff and set off against first judgment. **27,** 770 (44 N. W., 27). Notice of lien must be filed or served in order to bind adverse party. **26,** 409 (42 N. W., 403). Question of notice can only arise between attorney of successful and the unsuccessful party. **18,** 43 (24 N. W., 383). Recovery restricted to claim set out in notice. **5,** 468. Client not liable to a second attorney employed without his consent by his first attorney. **23,** 617 (37 N. W., 483). An attorney has no lien before judgment upon a cause of action sounding in tort. **18,** 505 (26 N. W., 361). Attorney cannot be prosecuted for embezzlement until his lien is discharged. **24,** 737 (40 N. W., 289).

285. Any person producing a license, or other satisfactory voucher, proving that he has been regularly admitted an **attorney** at law, in any court of record within the United States, that he is of good moral character, may be **licensed** and permitted to practice as a counselor and attorney at law in any court in this state **without examination.**

286. **[Parties may act as.]**—Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending in their proper persons; and nothing herein contained shall be so construed as to affect any person or persons heretofore admitted to the degree of an attorney or counselor at law, by the laws of this state, so as to subject them to further examination, or make it necessary for them to renew their license.

287. **[Who Disqualified.]**—No person shall be permitted to practice as an attorney of the courts of this state who holds a commission as supreme or district judge, or sheriff, clerk, constable, or jailer, in the county where they hold their respective offices, or clerk of the supreme or district courts of the state; **Provided*, That where an attorney at law or any other person holds the office of county judge or justice of the peace, he shall not be permitted to practice as such attorney on any matter brought before himself, or appealed from his decision to a higher court; and any violation of this section shall be deemed a misdemeanor, and subject any such officer to **fine,** not less than five and not more than twenty-five dollars.

Amended by omitting judge of probate, changing "territory" to "state," and adding all after *. 1877, p. 39. In force June 1.

288. **[Embezzlement.]**—When an attorney, residing and practicing in any state or territory, receives money upon demands left with him for collection in such state or territory, which he omits to pay over, he is liable to arrest here in an action brought to recover the money.

289. Upon filing original **papers** in any case, it shall be his duty to **endorse** thereon his **name.**

290. It shall be the duty of every **attorney** to act **as** the **guardian** of any infant defendant in any suit pending against him, when appointed for that purpose by an order of the court; shall prepare himself to make the proper defense, to guard the rights of such defendant, and shall be entitled to such compensation as the court shall deem reasonable.

CHAPTER 6.—BANKS.

Secs. 291 to 306. "An act to require corporations, firms, and individuals transacting a banking business to make report of their resources and liabilities to the auditor of public accounts, and to provide for the examination of the affairs of such banking institutions, and to fix a minimum capital for the transaction of a banking business; punish the receiving of deposits by insolvent banking institutions and to provide for winding up their affairs." 1889, p. 388. In force June 30. Repeals secs. 1 to 3, ch. 8, Comp. Stats. 1887.

291. **[Capital required.]**—It shall be unlawful for any corporation, firm, or individual to transact a banking business by receiving money on deposit, buying and selling exchange and the like, unless such corporation, firm, or individual shall have property of cash value as follows: In cities, villages, and communities having a population of less than one thousand (1,000) inhabitants, five thousand (5,000) dollars; in cities, and villages, having a population of more than one thousand (1,000) and less than fifteen hundred (1,500) inhabitants, ten thousand (10,000) dollars; in cities and villages having a population of less than two thousand (2,000) and more than fifteen hundred (1,500) inhabitants, fifteen thousand (15,000) dollars; in cities having a population of less than three thousand (3,000) and more than two thousand (2,000) inhabitants, twenty thousand (20,000) dollars; in cities having a population of less than five thousand (5,000) and more than three thousand (3,000) inhabitants, twenty-five thousand (25,000) dollars; in cities having a population of less than ten thousand (10,000) and more then five thousand (5,000) inhabitants thirty thousand (30,000) dollars; in cities having a population of more than ten thousand (10,000) inhabitants, fifty thousand (50,000) dollars. Such property shall be in money or in money's commercial paper, bank furniture, and the necessary bank buildings with the lot or lots on which the same are built, and of the cash value aforesaid, above all incumbrances thereon and in excess of all liabilities owing by such corporation, firm, or individual; *Provided*, That real estate, furniture, and fixtures shall not constitute more than one-third (⅓) of capital.

292. Every **bank**, or corporation, firm, or individual transacting a banking business shall, at least ten (10) days before commencing such business, transmit to the auditor of public accounts a **report** of the character set forth in section four (4) of this act [294]; *Provided*, That every bank, or corporation, firm, or individual, transacting a banking business at the time this act takes effect, shall transmit such report within ten (10) days from such time.

293. Every bank and every corporation, firm, or individual transacting a banking business, shall make to the auditor of public accounts not less than **three** (3) **reports** during **each year** according to the form which may be prescribed by him, which report shall be **verified** in the case of incorporated banking companies by the oath or affirmation of the president or cashier, and in other cases by the oath or affirmation of a partner, member, or business manager. But the officer administering the oath or affirmation to the person verifying such report shall be in no way interested in such bank as a stockholder, member, partner, bank officer.

294. Such **report shall state** the amount loaned upon bond and mortgage, the par value and actual market value of all stock or bond investments, designating each particular kind and the amount invested in each; the amount loaned upon notes, bills of exchange, over-drafts, and other personal securities, with the actual market value of such securities; the amount of rediscounts and of commercial paper past due; the amount invested in real estate, giving the cost of the same; the amount of cash on hand and on deposit in banks or trust companies, with their

names and the amount deposited in each; the amount of all other assets not enumerated above, and such other information as the auditor of public accounts, state treasurer, and attorney general, or any two of them, may require; *Provided,* That commercial paper, not in process of collection, six (6) months past due with interest unpaid, shall not be included in the report of the assets of such corporation, firm, or individual. Each report shall state such resources and liabilities at the close of business on any past day by the auditor of public accounts specified, and shall be transmitted to him within five (5) days after the receipt of a request or requisition therefor from him. And a summary of such report in the form prescribed by the auditor of public accounts, state treasurer, and attorney general shall be published in a newspaper published in the place where such banking business is transacted, or if there is no newspaper in the place, then in one published nearest thereto in the same county, at the expense of such bank, corporation, firm, or individual; and proof of such publication shall be transmitted to the auditor of public accounts.

295. The auditor of public accounts, state treasurer, and attorney general, or any two of them, shall have power to call for **special reports** from any particular bank, corporation, firm, or individual transacting a banking business whenever in their judgment the same are necessary in order to a full and complete knowledge of his or its condition.

296. [**Examiners.**]—The auditor of public accounts, state treasurer, and attorney general, or any two of them, shall appoint a suitable person to perform the **clerical work** necessary to carry out the provisions of this act. They shall also appoint a suitable person or persons having practical knowledge of banking to make an examination of the affairs of every bank, and every corporation, firm, or individual transacting a banking business, as often as shall be deemed necessary and proper, and at least once in every year. But no person shall be appointed to examine the affairs of any bank, or corporation, firm, or individual transacting a banking business who is an officer, stockholder, member, partner, or clerk in any banking institution of this state. The auditor of public accounts, state treasurer, and attorney general, or any two of them, may at any time remove any person so appointed by them.

297. The person or persons so appointed shall have power to make a thorough **examination** into all the books, papers, and affairs of the bank, or corporation, firm, or individual transacting a banking business, and, in so doing, to administer oaths and affirmations, and to examine on oath or affirmation any individual banker and the officers, agents, partners, and clerks of such bank, corporation, firm, or individual touching the matters he or they shall be directed or may desire to inquire into; and to summon, and by attachment compel, the attendance of any inhabitant of the state, to testify under oath before him or them in relation to the affairs of such corporation, firm, or individual. The person or persons making such examination shall make a full and detailed **report** of the condition of such corporation, firm, or individual to the auditor of public accounts.

298. Every person appointed to examine the affairs of any bank, corporation, firm, or individual transacting a banking business shall receive **compensation** for such examination at the rate of ten dollars ($10) for each day by him employed in such examination, which shall be paid to him by the bank, corporation, firm, or individual whose affairs are examined; *Provided,* That the fees paid by any such corporation, firm, or individual for any such single examination shall not be less than ten dollars ($10) nor more than twenty dollars ($20), and that no such corporation, firm, or individual shall be required to pay for more than one such examina-

tion in any one year; *And provided further*, That all fees collected by any such examiner in excess of the sum of two thousand dollars ($2,000) per annum and all his necessary traveling expenses shall be paid into the state treasury for the benefit of the general fund. Every person appointed as such examiner shall make at the end of every year to the auditor of public accounts, state treasurer, and attorney general a detailed **report** of all fees collected by him under this act, and of all his necessary traveling expenses in the performance of his duties as such examiner; and shall give a **bond** in the sum of ten thousand dollars ($10,000), executed by himself, with two sufficient sureties to be approved by the governor, conditioned for the faithful performance of his duties as such examiner.

299. Every bank, corporation, firm, or individual who shall fail or **neglect to** make any **report** required by the provisions of this act shall be subject to a **penalty** of fifty dollars ($50) for each day after the periods respectively therein mentioned that he or it delays to make and transmit such report, to be recovered by and for the state in a civil action; and every person who shall willfully and knowingly subscribe or make, or cause to be made, any **false statement** or false entries in the books of any bank, corporation, firm, or individual transacting a banking business, or shall knowingly subscribe or exhibit false papers with the intent to deceive any person or persons authorized to examine into the affairs of said bank, corporation, firm, or individual, or shall make, state, or publish any false statement of the amount of the capital assets, surplus, or undivided profits of any such corporation, firm, or individual, shall be deemed guilty of a felony, and upon conviction thereof shall be fined not exceeding ten thousand dollars ($10,000) and be imprisoned in the state penitentiary not less than one (1) nor more than five (5) years.

300. Every bank shall at all times have on hand as a **reserve** in available **funds** an amount equal to at least fifteen (15) per centum of the aggregate amount of its deposits and immediate liabilities, which said reserve shall be twenty (20) per centum in banks located in cities having a population of twenty-five thousand (25,000) or over; *Provided*, That savings banks, doing an exclusive savings bank business, shall have on hand, at all times, as a reserve, in available funds an amount equal to at least five (5) per cent of its deposits and immediate liabilities. The available funds shall consist of cash on hand and balances due the corporation, firm, or individual from good solvent banks. Immediate liabilities shall include all claims against the corporation payable on demand. Cash shall include specie, legal tender notes, bills of solvent banks, and exchange for any clearing house association. Whenever the available funds of any bank shall fall below the reserve herein required, such bank shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight; nor shall such bank make any dividends of its profits until it has on hand the available funds required by this act. The auditor of public accounts may notify any such bank, in case its reserve shall fall below the amount required, to make good such reserve without delay, and any failure for the period of thirty (30) days by such corporation, firm, or individual to make good any deficiency in the amount of his or its deposits required to be kept on hand, shall be cause for the appointment of a receiver as provided by section fourteen (14) of this act [304].

301. The total **liabilities** of any corporation, firm, or individual to any bank or corporation, firm or individual transacting a banking business, for money borrowed, including in the liabilities of a corporation or firm the liabilities of the several members thereof, shall at no time exceed twenty (20) per centum of the capital of the banking corporation, or firm or individual banker, and in no case shall the total liabilities of the stockholders of any bank or corporation transacting

a banking business, to said bank or corporation, exceed fifty (50) per cent of the paid up capital of said bank or corporation. But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial paper actually owned by the person negotiating the same, shall not be considered as money borrowed.

302. **No bank,** corporation, firm, or individual engaged in the banking, broker, exchange, or deposit business shall **accept** or receive on **deposit,** with or without interest, any money, bank bills, or notes, or United States treasury notes or currency, or other notes, bills, or drafts, circulating as money or currency, **when** such bank or corporation, firm, or individual is **insolvent.**

303. [**Penalty.**]—If any such bank, corporation, firm, or individual shall receive or accept on deposit any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party, or managing party thereof who shall knowingly receive or accept, be accessory or permit, or connive at the receiving or accepting on deposit therein or thereby any such deposits as aforesaid, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the penitentiary not exceeding five (5) years, or by both fine and imprisonment as aforesaid.

304. Whenever it shall appear to the auditor of public accounts, state treasurer, and attorney general, or any two (2) of them, from any examination or report provided for by this act, that any corporation, firm, or individual transacting a banking business is the owner of property of the kind required by this act, of the cash value of less than the amount herein required, above all incumbrances thereon, and in excess of all liabilities due from said corporation, firm, or individual, or is conducting his or its **business** in an **unsafe** and unauthorized manner and is jeopardizing the interests of his or its depositors, and that it is unsafe and inexpedient for any such corporation, firm, or individual to continue to transact a banking business, they shall communicate the facts to the attorney general, who shall thereupon apply to the supreme court or the district court of the county where such corporation, firm, or individual has his or its banking office, or to a judge of either, for the appointment of a **receiver** to take charge of and wind up such banking business. It shall be sufficient to authorize the appointment of a receiver, on the application of the attorney general, that the facts set forth in this section shall be made to appear.

Supreme court may appoint a receiver to wind up a bank. 28, 682 (44 N. W., 998).

305. This act does not apply to banks organized under the **national banking** act of the United States.

306. **Savings banks** shall not be subject to the provisions of section one (1) of this act [291], but no savings bank shall carry on business in this state with a paid up capital of less than twelve thousand ($12,000) dollars, nor shall any savings bank receive deposits to an amount exceeding ten (10) times the aggregate of its paid up capital stock and surplus. Under the term savings bank as named in this act shall be included only such banks as do a savings bank business exclusively, paying out money only on presentation of pass books and certificates of deposit, discounting and buying no commercial paper, and reserving the right to demand notice before paying deposits.

CHAPTER 7.—CHATTEL MORTGAGES.

Secs. 307 to 315. "An act relating to the sale and transfer of personal property under mortgage." 1867 (Ter.), p. 9. In force February 18.

307. Every **mortgage** of personal property containing and giving to the mortgagee or any other person a power to sell the property described therein, upon default being made in any condition of such mortgage, may be **foreclosed** in the cases and in the manner hereinafter specified.

Need not be in writing. **8,** 3. Mortgage must be filed in the county where the sale is to take place. **21,** 399 (32 N. W., 205). To render chattel mortgage fraudulent, fraud must have been known to, or participated in, by mortgagee. **11,** 291 (9 N. W., 48). Mortgagee entitled to possession upon default, but liable to account to mortgagee for surplus, and action for accounting not barred by a judgment in replevin against mortgagor. **29,** 455 (45 N. W., 617). Whole instrument shall be construed together. Mortgagee cannot at any time declare himself unsafe and insecure unless some act is done to impair his security. **22,** 720 (36 N. W., 155). Mortgagee cannot withdraw original from files, and foreclose. **24,** 596 (39 N. W., 615). Though the property may be sold, yet the proceeds cannot be applied in payment of note until note becomes due. **21,** 401 (32 N. W., 205). A certified copy of a mortgage filed is sufficient authority for taking possession. **25,** 360 (41 N. W., 192).

308. To entitle any person to foreclose a chattel mortgage as hereinafter prescribed, it shall be **requisite**—1. That some **default** in a condition of such mortgage shall have occurred, by which the power to sell became operative. 2. That if **no suit** or proceeding shall have been instituted at law **to recover** the debt then remaining secured by such mortgage or any part thereof, or if any suit or proceeding has been instituted that the same has been discontinued, or that an execution upon the judgment rendered thereon has been returned unsatisfied, in whole or in part, and 3. That such mortgage containing the power of sale has been duly **recorded.**

309. **Notice** that such mortgage will be foreclosed by a sale of the mortgaged property, or some part thereof, shall be given as follows: By advertisement **published** in some newspaper printed in the county in which such sale is to take place, or in case no newspapers are printed therein, by posting up notices in at least five public places in said county, two of which shall be in the precinct where the mortgaged property is to be offered for sale, and such notices shall be given at least twenty days prior to the day of sale.

16, 461 (20 N. W., 632).

310. Every such **notice** shall **specify**—1. The **date** of the mortgage and where recorded. 2. The **names** of the mortgagor and mortgagee, and the assignee of the mortgagee, if any. 3. The **amount** claimed to be **due** thereon at the time of the first publication or posting of such notice. 4. A **description** of the mortgaged property, conforming substantially with that contained in the mortgage. 5. The time and place of sale.

311. Such **sale** may be **postponed** from time to time by inserting a **notice** of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale shall be postponed; or, in case no newspaper is published in the county in which such sale is to be had, by posting a notice of such adjournment in some conspicuous place, at the place designated in the original notice posted for such sale to be had.

312. Such **sale** shall be at public auction, in the day **time,** between the hours of 10 A. M. and 4 P. M., in the county where the mortgage was first recorded, or in any county **where** the property may have been removed by consent of parties, and in which the mortgage was duly recorded, and in view of said property.

313. The mortgagee, his assignees, and his or their legal representatives, may, fairly and in good faith, purchase any of the mortgaged property offered at such sale.

314. When a mortgage shall have been foreclosed, as herein provided, any and all right of equity of redemption which the mortgagor may or might have had shall be and become extinguished.

315. That any person who, after having conveyed any article of personal property to another by mortgage, shall, during the existence of the lien or title created by such mortgage, sell, transfer, or in any manner dispose of the said personal property, or any part thereof, so mortgaged, to any person or body corporate, without first procuring the consent, in writing, of the owner and holder of the debt secured by said mortgage to any such sale, transfer, or disposal, shall be deemed guilty of a felony, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, or imprisoned in the penitentiary for a term not less than one year nor more than ten years, or both fine and imprisonment, at the discretion of the court.

Wording changed and penalty raised from $500, 1877, p. 5. Again amended 1889, omitting clause relating to removal, p. 386.

Sec. 316. "An act to prevent the fraudulent removal out of the county of mortgaged personal property and to provide a penalty for the violation of this act." 1885, p. 108. In force March 7.

316. That any person who, after having conveyed any article of personal property to another by mortgage, shall, during the existence of the lien or title created by such mortgage, remove, permit, or cause to be removed, said mortgaged property, or any part thereof, out of the county within which such property was situated at the time such mortgage was given thereon, with intent to deprive the owner or owners of said mortgage of his security, shall be deemed guilty of felony, and on conviction thereof shall be imprisoned in the penitentiary for a term not exceeding ten years, and be fined in a sum not exceeding one thousand dollars.

CHAPTER 8.—CIVIL RIGHTS.

Secs. 317 and 318. "An act to provide that all citizens shall be entitled to the same civil rights, and to punish all persons for violations of its provisions." 1885, p. 393. **In force March 4.**

317. All persons within this state shall be entitled to a full and **equal** enjoyment of the accommodations, advantages, facilities, and **privileges** of inns, public conveyances, barber shops, theatres, and other places of amusement; subject only to the conditions and limitations established by law, and applicable alike to every person.

318. Any **person** who shall violate the foregoing section by **denying** to any person, except for reasons by law applicable to all persons, the full enjoyment of any of the accommodations, advantages, facilities, or privileges enumerated in said section, or by aiding or inciting such denials, shall for each offense be deemed guilty of a misdemeanor, and be **fined** in any sum not less than twenty-five dollars ($25) and not more than two hundred dollars ($200), and pay costs of the prosecution, and in default or refusal to pay the fine and costs, be imprisoned in the county jail until such fine and costs are paid.

This act valid as to citizens—barber shops cannot discriminate against persons on account of color. 25, 677 (41 N. W., 638).

CHAPTER 9.—CORPORATIONS.

I. GENERAL PROVISIONS.

Secs. 319 to 335 formed secs. 54 to 71, except sec. 60, ch. 25, R. S. 1866, p. 208.

319. All **companies** now incorporated in this state, and actually doing business, may accept any of the provisions of this chapter, and when so accepted, and a certified copy of their acceptance filed with the secretary of the state, that portion of their charters inconsistent with the provisions of this chapter is hereby repealed. All companies hereafter incorporated, or accepting the provisions of this chapter, except those named in the fortieth section of this chapter, are required to make and publish, in some newspaper of general circulation in the county where the principal office is located, an **annual** exhibit, showing a full, fair, and detailed **statement** of the condition of such company, which **statement** shall be verified by the oath of the president, secretary, and clerk.

320. No **company** or association incorporated under the provisions of this chapter shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever than to **accomplish** the legitimate **object** of its creation.

321. The board of **directors** or trustees of any company heretofore incorporated, or which may hereafter be formed under any law of this state, may, with the written consent of the persons in whose name a majority of the shares of the capital stock thereof shall stand on the books of said company, **reduce** the amount of the said **capital stock,** and the nominal value of all the shares thereof, and issue certificates therefor; *Provided,* That the rights of creditors shall not be affected or in anywise impaired by the reduction of the capital stock of any such corporation.

322. Whenever any joint stock **company** hereafter incorporated for the purpose of erecting any **public improvement** in this state, whose charter may be limited as to the time of completion of said improvement, and when any such company has been legally organized, and has actually commenced and has in progress toward completion such public improvement, it shall be lawful for any such company to have **further time** allowed **for** the final **completion** of said work, as is hereinafter provided.

323. Upon petition being filed by the directors of any corporation, in the **district court** of the county in which the principal office of such corporation is located, and upon giving thirty days' notice, by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after the publication of said notice, upon good cause shown, **decree** the **extension of** the **time** for the completion of said improvement, to such period as shall appear to such court just and reasonable.

324. Whenever any company, association, or society heretofore or hereafter incorporated shall have failed to elect its **officers** at the time designated, it shall be lawful for any such company, association, or society to call a **meeting** and elect its officers, who shall hold the respective offices until the time specified for the annual or other fixed time for holding such election; and when any incorporated company heretofore organized, or that may be hereafter organized under the provisions of this chapter, shall have a specified time fixed for its annual meeting, a

majority of the stockholders in interest may, at any regular annual meeting, change the time of the annual meeting thereof.

Amended 1869, p. 20.

325. When any religious society shall **petition**, as is provided for in the preceding section, all persons who may have a vested, contingent, or reversionary interest in the real estate sought to be sold or incumbered shall be made **parties** to said petition, and such parties shall be notified of such petition in the same manner as is or may be provided for in cases of petitions for partitions of real estate; *Provided*, That the provisions of this chapter shall not extend to any ground used or occupied as burial places for the dead.

326. Upon the **dissolution,** by the expiration of the term of its charter or otherwise, of any corporation now existing, or hereafter created, and unless other persons be appointed by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporation, acting last before the time of its dissolution, by whatever name they may be known in law, and survivors of them, shall be the **trustees** of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the moneys and property that shall remain, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; and the persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands; and no suit against any such corporation shall abate in consequence of such dissolution, and said trustees may be made parties thereto by *scire facias;* and all liens of judgment and decrees of any courts of chancery, existing at the time of such dissolution, either in favor of or against such corporation, shall continue in force in the same manner as if such dissolution had not taken place; *Provided,* That in case of the death, resignation, inability, or refusal to act, of the directors or managers aforesaid, or the survivors thereof, the district court of the proper county may, on the application of any person interested, appoint trustees to fill the vacancy, with full power to perform the duties aforesaid.

327. **No** suit or **action,** either at law or in chancery, pending in any court, in favor of or against any banking or other corporation, shall be discontinued or **abate** by the dissolution of such corporation, whether such dissolution occur by the expiration of its charter or otherwise; but all such suits or actions may, in all courts of justice, be prosecuted by the creditors, assigns, receivers, or trustees having the legal charge of the assets of such dissolved corporation, to final judgment or decree, in the corporate name of such dissolved corporation.

328. Upon all **judgments** and decrees in favor of or against any such corporation, whether such judgments or decrees exist at the time of the dissolution of such corporations or are obtained afterwards, in suits or actions pending at the time of such dissolution, execution may be had, and satisfaction or performance of the same be **enforced** by the creditors, assigns, receivers, or trustees having the legal charge of the assets of such dissolved corporation, in the corporate name of such dissolved corporation.

329. The title of all **real estate** belonging to any such corporation shall, at the time of the dissolution of the same, **pass to** the **trustees** of such corporation, who shall have full power and authority to sell and dispose of any such real estate, in such manner and upon such terms as may be thought best for the interest of the

creditors and stockholders, and upon any such sale to make a good and sufficient title therefor.

330. The **trustees** of any such dissolved corporation shall be **subject** to the **control of** the court of **chancery,** and be liable to be sued by petition in chancery, on behalf of any person interested, on account of any neglect or omission of duty or abuse of trust; and in case of the removal of any such trustee by such court for an abuse of trust, such court shall have the power and authority to appoint a suitable person to fill the vacancy; and any such trustee may for reasonable cause, upon the application of any creditor or stockholder, be required by the district court to give bond and security in such amount and subject to such conditions as the court may direct.

331. Any corporation created by this chapter may, at any time **after** its **dissolution,** whether such dissolution occur by the expiration of its charter or otherwise, prosecute any suit at law or in equity, in and by the corporate name of such dissolved corporation, for the use of the party entitled to receive the proceeds of any such suit, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued in favor of such corporation, in the same manner and with the like effect as if such corporation were not dissolved.

332. Any such **dissolved corporation** may be **sued** at law or in equity, in and by its corporate name, for or upon any cause of action accrued, or which, but for such dissolution, would have accrued against such corporation in the same manner and with the like effect as if such corporation were not dissolved, and all process by which any suit, either at law or in equity, may be instituted against any such dissolved corporation, may be served by the sheriff or any other proper officer, by delivering to any one of the assignees, trustees, receivers, or persons having charge of the assets of such dissolved corporation a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver, or person having charge of such assets.

333. **Judgments** and decrees in favor of or against any such dissolved corporation, whether such judgments and decrees were rendered before or after such dissolution, and which have heretofore or may at any time hereafter become dormant, may be **revived** in favor of or against such dissolved corporation, as the case may be, in and by the corporate name of such dissolved corporation, in the same manner and with the like effect as if such corporation were not dissolved; and in all cases of judgment or decrees against any such corporation the writ of *scire facias*, or other proper process, shall be served in the manner prescribed in the preceding section for the process in suits against dissolved corporations.

334. **Writs of error** upon judgments at law may be sued out, and bills of review in chancery may be exhibited, in favor of or against any such dissolved corporation, and by its corporate name in the same manner and with the like effect as if such corporation were not dissolved, and process thereon against any such dissolved corporation shall be served in the manner prescribed in this subdivision.

335. Nothing in this **chapter** contained shall at any time be **construed** as extending or reviving the charter of any banking or other corporation dissolved either by affluxion of time or otherwise, for any other purpose than that of judicial proceedings, in favor of or against the same.

Secs. 336 to 357 formed secs. 123 to 144, ch. 25, R. S. 1866.

336. **Any** number of persons may be associated and incorporated for the transaction of any **lawful business,** including the construction of canals, railways, bridges, and other works of internal improvement.
7, 177.

337. Every **corporation**, as such, has **power**: *First*—To have succession by its corporate name. *Second*—To sue and be sued, to complain and defend in courts of law and equity. *Third*—To make and use a common seal, and alter the same at pleasure. *Fourth*—To hold personal estate, and all such real estate as may be necessary for the legitimate business of the corporation. *Fifth*—To render the interest of the stockholders transferable. *Sixth*—To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation therefor. *Seventh*—To make by-laws, not inconsistent with any existing law, for the management of its affairs.

Statutory enumeration of corporate powers, implies exclusion of all others. **24**, 144 (38 N. W., 43). Corporation cannot appropriate geographical word "Nebraska" as part of its trade name. **27**, 514, (43 N. W., 348). Conveyance in name of president. **1**, 439. See **7**, 176.

338. The **powers** enumerated in the preceding section shall **vest** in every corporation in this state, whether the same be formed without or by legislative enactment, although they may not be specified in its charter, or as articles of association.

See **4**, 73.

339. Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt **articles of incorporation,** and have them recorded in the office of the county clerk of the county or counties in which the business is to be transacted, in a book kept for that purpose.

340. Corporations for the construction of works of internal improvement **must** also **file** in the office of the secretary of state a **copy** of their articles of association, and the same shall be recorded in a book kept for that purpose.

341. The articles of incorporation must fix the highest amount of **indebtedness** or liability to which the corporation shall, at any one time, be subject, which must in no case exceed two-thirds of the capital stock; *Provided, however*, That the above **limitation** shall not apply to debts for the risks of insurance companies, deposits in banks, and the notes, bonds, or debentures of any loan or trust company organized under the provisions of this chapter, where the payment of such notes, bonds, or debentures shall be secured by the actual transfer of real estate, by trust deed, or mortgage, for the payment of such notes, bonds, or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds, or debentures; *Provided, further*, That said limitation shall not apply to any loan or trust company's guarantee for the payment after transfer of any notes, bonds, or debentures, where the same is secured by trust deed, or mortgage as above stated.

Provision relative to bank deposits added 1869, p. 79; that regarding loan companies, 1887, p. 376.

342. If any corporation hereafter created by the legislature shall not organize within one year after its incorporation, its corporate **powers** shall cease.

343. **Notice** must be published in some newspaper near the principal place of business, for four weeks.

344. Such **notice** shall **contain**: *First*—The name of the corporation. *Second*—The principal place of transacting its business. *Third*—The general nature of the business transacted. *Fourth*—The amount of capital stock authorized, and the time and conditions on which it is to be paid in. *Fifth*—The time of commencement and termination of the corporation. *Sixth*—The highest amount of indebtedness or liability to which the corporation is at any time to subject itself. *Seventh*—By what officers the affairs of the corporation are to be conducted.

345. Any corporation formed without legislative enactment may **commence**

business as soon as its articles of incorporation are filed by the county clerks of the counties, as required by this subdivision, and shall be valid if a copy of its articles be filed in the office of the secretary of state, and the notice required be published within four months from the time of filing such articles in the clerk's office.

346. Every **change** in any of the above matters shall be **recorded** and published in the same manner as the original articles are required by law.

347. No corporation can be **dissolved** by the members thereof except by consent of two-thirds of all its members, which consent must be entered on its records, unless a different rule has been adopted in its articles of incorporation.

348. A copy of the **by-laws** of the corporation, and the names of all the officers appended thereto, must be **posted** in some conspicuous place, at the places of doing business, subject to public inspection.

349. Every corporation hereafter created shall give **notice** annually, in some newspaper printed in the county or counties in which the business is transacted, and in case there is no newspaper printed therein, then in the nearest paper in the state, of the amount **of** all existing **debts** of the corporation, which notice shall be signed by the president and a majority of the directors, and if any corporation shall fail to do so, * after the assets of the corporation are first exhausted, then * all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such notice is given, * to the extent of the unpaid subscription of any stockholder to the capital stock of such corporation, and in addition thereto the amount of capital stock owned by such individuals.

* to * and all after * added 1891, p. 199. Applies to railroads. **4,** 561. The debts referred to in this section and section 352 are debts arising upon contract, and not damages for torts. **11,** 244 (9 N. W., 54). See **10,** 603 (7 N. W., 329); **4,** 561. Action against stockholders is *quasi*-penal only, and not barred in one year, the limitation being the same as in other contracts. **29,** 487 (45 N. W., 923).

350. It shall be lawful for any corporation to **convey lands** by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed, when acknowledged by such officer to be an act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds.

Corporation which has made a loan cannot avoid the conveyance until it has repaid the money loaned. **1,** 473.

351. All corporations may **sue** for and recover from their respective **members in** any court of competent jurisdiction, all **arrears** or other debts due, or other demands which now are or hereafter may be owing to them, in like manner as they might sue for and recover the same from any indifferent person who might be a member, any law, usage, or custom to the contrary notwithstanding.

But the full amount of stock must be taken before a liability arises. **16,** 1 (20 N. W., 97).

352. If any corporation fail to comply, substantially, with the provisions of this subdivision, in relation to giving notice and other requisitions of organization, *after the assets of corporation are first exhausted, then * the property of any **stockholder** shall be **liable** for the corporate debts, * to the extent of the unpaid subscription of any stockholder to the capital stock of such corporation, and in addition thereto the amount of capital stock owned by such individual.

* to * and all after * added 1891, p. 199. When provisions of the statute not complied with, property of all the stockholders shall be liable for the corporate debts. **4,** 425. Applies only to indebtedness contracted during the time the officers are in default of publishing the notice required. **8,** 118. See **4,** 561.

353. If any **deception** be practiced by any corporation upon the public or individuals, in relation to its **means** or **liabilities**, all those engaged in such deception shall be liable to a fine not exceeding five hundred dollars; and any person injured by such deception may recover double the amount of damages he may have sustained by reason of the same, in any court having jurisdiction of the amount claimed.

354. A **division of** the **funds** of a corporation, for other purposes than those mentioned in the act granting the charter and the payment of dividends, which have insufficient funds to meet the liabilities of the corporation, shall be deemed a **violation** of the provisions of this subdivision, and subject those engaged therein to the penalties herein prescribed.

355. Any violation of the provisions of this subdivision shall cause a **forfeiture** of all the privileges conferred by the same, and the court may proceed to close the affairs of the corporation by an information for that purpose.

Repeated and willful acts of misuser or nonuser, which are of the essence of the contract between the corporation and the state, constitute a just ground of forfeiture of the franchise. **11,** 354 (9 N. W., 563).

356. Corporations whose charters expire by their own limitation, or by the voluntary acts of the stockholders, may continue to act for the purpose of **closing** their **business,** but for no other purpose.

357. **No** body of men acting as a corporation under the provisions of this subdivision shall be permitted to set up the **want of** legal **organization** as **a defense** to any action brought against them as a corporation; nor shall any person sued on a contract made with such corporation, or for an injury to the property of such corporation, be permitted to set up the want of legal organization in defense of such action.

Not necessary for a bank to prove its corporate existence when suing upon a note. **22,** 576 (36 N. W., 113).

Sec. 358. "An act to enable **foreign corporations** to become domestic corporations of this state." 1889, p. 407. In force March 19.

358. That any corporation organized under the laws of any other state or states, territory or territories, which has filed, or may hereafter **file** with the secretary of state of this state a true copy of its **charter** or articles of association, shall, on filing with the secretary of state a certified copy of the resolution adopted by its board of directors, accepting the provisions of this act, be and become a body corporate of this state.

A promissory note made by president of a corporation before corporation legally organized, but which was afterwards ratified, *held,* good against such corporation. **21,** 646 (33 N. W., 271).

II. MONEYED CORPORATIONS.

Building and Loan Associations.

Secs. 359 to 362. "An act to enable associations of persons for raising funds to be loaned among their members for building them homesteads and other purposes to become bodies corporate." In force February 18, 1873. G. S., 207.

359. Any number of persons, not less than five, may associate themselves together and become a corporation as provided in chapter twenty-five of the Revised Statutes, commencing at section 123 of said chapter [336] under the title of "Corporations," for the purpose of raising moneys to be loaned among the members of such corporation, for use in buying lots or houses, or in **building** or repairing or removing incumbrances from houses; and such corporation shall be authorized and empowered to levy, assess, and collect from its members such sums of money, by rates of stated dues, fines, interest on **loans advanced**, and premiums bid by members

for the right of precedence in taking loans, as the corporation, by its by-laws, shall adopt; also to acquire, hold, encumber, and convey all such real estate and personal property as may be legitimately pledged to it on such loans, or may otherwise be transferred to it in the due course of its business; *Provided*, That the **dues**, fines, and premiums so paid by members of such corporation, although in excess of twelve per cent per annum, on loans taken by them, shall not be construed to make the loans so taken usurious; *And provided, also*, That no person shall hold more than ten shares in any such association in his own right, each share not to exceed two hundred dollars.

360. All **stockholders** of any such association shall be deemed and held **liable** to any amount equal to their stock subscribed, or by them at any time held in addition to said stock, for the purpose of securing the creditors of said association.

361. All contracts and **loans made** by any corporation or association **already** formed and now in existence in this state, under and by virtue of said chapter twenty-five of the Revised Statutes [ch. 9, this stat.], to and with any member of said corporation or association, and not inconsistent with the laws of this state, nor anything in this act contained, are hereby declared to be legal and binding contracts between said corporation or association and the members thereof so contracting; and the securities given by said members upon said contract or loan to said corporation or association, for the security of any loan, fine, or forfeiture, according to the terms and conditions of said security or contract, therein referred to, and not inconsistent with any law of this state or in this act contained, is hereby declared to be a **legal**, valid, and binding security, and contract in law in the hands of said corporation or association and with the party making the same, notwithstanding a greater rate of interest than twelve per cent per annum may have been contracted for or reserved in said contract.

362. That in all corporations or associations now formed and in existence in this state, and doing business in this state, which said corporation or association have made **loans** to any of its members and taken securities therefor in pursuance of their constitution and by-laws, that any payment made after the passage of this act, by any member of said corporation or association, of any dues, forfeitures, or fines which may be due to said corporation or association according to the terms of the contract between said corporation or association and said member to said corporation or association, shall be deemed in law a waiver of anything in said contract or loan that might be deemed **usurious** in the same under the laws of this state at the time the same was made and securities given, and a ratification of said loan or contract, and of its present and future legality between said parties, as now existing under and by virtue of this act.

Secs. 363 to 380. "An act to provide a law for the government, regulation, examination, reporting, and winding up of the business of associations hereafter incorporated under the laws of this state, which shall be organized within this state for the purpose of raising a fund by the collection of dues or stated payments from its members to be loaned among its members," etc.* 1891, p. 201. In force April 4.

363. Any **association** of not less than five persons, hereafter incorporated under the laws of this state, which shall be organized within this state for the purpose of raising a fund by the collection of dues or stated payments from its members, to be loaned among its members, shall, in furtherance of such purpose, and after having complied with the requirements of this act, be authorized and empowered to levy, assess, and collect from its members such sums of money, by rates of stated **dues**, fines, interest on loans advanced, and premiums bid by members for the right

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*This act is prefaced by an elaborate title, only the first clause of which is here given.

of precedence in taking loans, as the corporation may provide for in its constitution or by-laws, also, to acquire, **hold**, and convey all such **real estate** and personal property as may be legitimately pledged to it upon said loans, or may otherwise be transferred to it in the due course of its business (subject, however, to the limitations hereinafter named). The words "Loan and Building Association," "Building Association," or "Building and Loan Association" shall form part of the corporate name of every such corporation.

364. Every such association hereafter formed shall adopt a **constitution** which shall substantially give effect to the provisions of this act, and shall also adopt such by-laws for the government and management of its business as it shall deem proper; *Provided,* The same shall not be inconsistent with this act, and shall not contravene the laws or constitution of this state, or the United States, and may alter and amend the same from time to time in such manner as may be provided by its articles of incorporation. Such constitution shall contain equitable provisions, permitting any shareholder wishing to do so to withdraw from the association, in manner as follows: After three months from date of issue of the certificate of shares, a shareholder, or the legal representative of a deceased shareholder, wishing to withdraw from the said corporation, shall have the **power** to do so by giving thirty days' notice of such intention to **withdraw**, such notice being given in writing at the regular meeting of the board of directors. At the first regular meeting after the expiration of the thirty days' notice, or at any time thereafter, the member so withdrawing, or, if deceased, his legal representative, shall be entitled to receive, on demand, the amount paid in by him or her, less the admission fee and expense charges and such rate of interest as the by-laws may determine, less all fines and other charges. Should there have been, however, a net loss instead of a net gain, then such withdrawing shareholder shall receive the actual amount paid in, less his proportion of such net loss. At no time, however, shall more than one-half of the unloaned funds in the treasury of the corporation be applicable to the demands of the withdrawing shareholders without the consent of the board of directors. No shareholder shall be entitled to withdraw whose stock is pledged as security for a loan, either from the association or from any other party. It shall contain equitable provisions permitting the payment of loans before maturity, and for crediting borrowing members who have paid premiums in advance and who repay their loans before maturity, with an equitable share of the premiums paid by them. Such constitution shall also provide that if any **member** has become **delinquent** in his payments on any shares to an amount equal to the payments due thereon for any period named therein (not, however, less than three nor more than twelve months), such shares shall be canceled, and he shall, as to such shares, cease to be a member, and shall become a debtor or creditor of such association as the case may be, and it shall make equitable provisions for crediting such member with the same amount as if he had voluntarily withdrawn from the association, and if any sum be due him after deducting fines and losses, if any, to date of cancellation, it shall, if he be a borrower, be credited on his loan, and if he be not a borrower it shall be held subject to his order. Such constitution may, within the limits aforesaid, fix different periods for the cancellation of shares of borrowers and non-borrowers, and may also, within said limits, leave the period for cancellation, wholly or in part, to the discretion of the board of directors.

365. A copy of the articles of incorporation, **constitution**, and by-laws of every such association shall be **filed** in the office of the **auditor** of public accounts, who shall, with the state treasurer and attorney general, examine the same carefully and if they, or any two of them, shall find that they conform with the requirements of this act and contain a just and equitable plan for the management of the associ-

ation's business, they, or any two of them, shall issue to such association a certificate of their approval of such constitution and by-laws; but if they, or any two of them, find their provisions to be unjust or inequitable or oppressive to any class of shareholders, they shall withhold their approval. It shall not be lawful for any association hereafter organized within this state for the purposes set forth in section 1 of this act [363] to transact any business except the execution of its articles of incorporation, the adoption of a constitution and by-laws, and the election of directors and officers, until it shall have procured the certificate of approval above provided for, nor shall any amendment of the articles of incorporation, constitution, or by-laws of any such association become operative until a copy of the same shall have been filed and a certificate of approval obtained as above provided in regard to original articles of incorporation, constitution, and by-laws.

366. No **loan** shall be made by such association except to its own members, nor shall any loan be made to any member of any sum in excess of the par value of his stock, and the association shall have a **lien on** as many of the borrower's **shares** as shall equal at their face value the nominal amount of the loan; good and ample real estate security unincumbered, except by prior liens held by such association, shall also be given by the borrower; *Provided, however,* That the stock of such association may be received as security for a loan of the amount of the withdrawal value of such stock without other security. No evidence of indebtedness taken by such association for the return of any such loan shall be negotiable in form, and, whatever be its form, every such evidence of indebtedness shall be non-negotiable in law, and no such debt, or evidence of debt, shall be assignable or transferable in any manner so as to prevent the discharge thereof by payment made to the association.

367. Such associations may **purchase,** hold, lease, and convey **real estate** for the following purposes, and no other: 1st. Such as it may need to occupy as a place of business. 2nd. Such as shall in good faith be conveyed to it in satisfaction of debts previously contracted in the ordinary course of business. 3rd. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase in good faith to secure debts due to it. But no such association shall hold the title and possession of any real estate longer than three years, except for the first purpose above named. Nothing in this section shall be construed to forbid the mortgaging of real estate to such association.

368. **Shares of stock** in any such association may be subscribed for, **held,** transferred, surrendered, withdrawn, and forfeited, and payments thereon received and receipted for, by any **minor** over the age of fourteen years, in the same manner and with the same binding effect as though such person were of full age, except that the said minor, or his estate, shall not be bound on his subscription to stock except to the extent of payments actually made thereon. A **trustee** or guardian may acquire, hold, transfer, and withdraw and receive all moneys due upon shares in such associations for the use and account of any minor; but before he shall be permitted to withdraw, transfer, or receive payment upon any shares so held, such trustee or guardian shall file with the county judge where such association is located a bond for twice the value of the shares withdrawn, transferred, or money received, which bond shall be approved by said judge and shall be conditioned upon his faithfully accounting for the proceeds of the shares withdrawn, transferred, or money received, and the use thereof, and paying the same to said minor at his or her majority.

369. Such associations shall not be subject to taxation on their **capital stock,** nor on their loans, advances, or mortgages, but shares in said association shall, for the purposes of **taxation,** be considered and held as credits, and members and

holders of such shares shall list the same for taxation, and the same shall be taxed in such manner and subject to such deductions as may be provided by law for the taxation of other credits. The real estate of such associations shall be subject to taxation in the same manner as provided by law in the case of other corporations and individuals.

370. The **fees**, dues, fines, **interest**, premiums, and other payments of money made, contracted for, or required to be made, by any member of such association, by virtue of or in conformity with the provisions of its constitution and by-laws, though the same may aggregate a greater amount, taking into account all the terms and conditions of payment to and from such member, than is or may be allowed by the laws of this state to be taken or collected as interest on ordinary contracts for the payment of money, shall not make any such payment or contract therefor usurious, but all such contracts may be enforced, and such fees, dues, fines, interest, premiums, and payments collected in the same manner as other debts on contracts not usurious; *Provided*, That the certificate of approval provided for in section 4 of this act [365], issued to such association, shall be conclusive evidence of such compliance with the requirements of this act as to entitle it to the benefits of this section; *Provided, further*, That no association hereafter formed within this state, except such as hold such certificate of approval, shall be exempt from the operation of the usury law of this state.

371. Every such association shall annually, and at such other times as required by the auditor of public accounts, state treasurer, and attorney general, or any two of them, **file** in the office of the auditor of public accounts a **statement**, verified by the oath of its president or secretary and approved by three of its directors, in such form as may be prescribed by the auditor of public accounts, setting forth its actual financial condition and the amount of its assets and liabilities, and furnishing such other information as to its affairs as the auditor of public accounts may require, and a copy of such annual statement shall be **published** in a newspaper of general circulation in the county where such association is located, three consecutive times, and due proof of such publication by affidavit shall be filed with the auditor of public accounts. Whenever the constitution of an association fixes a date for the close of its fiscal year, the annual report of such associations [*] shall show its condition at such date; in all other cases such report shall show the condition of the association at the close of the calendar year, and no other or further notice or statement of the amount of the existing debts of such corporation shall be required to be published or given. The auditor of public accounts, state treasurer, and attorney general, or any two of them, shall have power to call for **special reports** from any such association, whenever in their judgment the same may be necessary or advisable. Any association failing to comply with the provisions of this section shall forfeit its charter rights.

372. Every person who shall willfully or knowingly subscribe, or make or cause to be made, any false statement or **false entries** in any books of any association organized for the purposes set forth in section one (1) of this act [363], or exhibit false papers with the intent to deceive any person authorized to examine into the affairs of such association, or shall make, state, or publish any false statement of the financial condition of such association, shall be deemed guilty of a **felony**; and upon conviction thereof shall be fined not exceeding ten thousand ($10,000) dollars and be imprisoned in the state penitentiary not less than one (1) nor more than five (5) years.

373. The person or persons appointed under the laws of this state to make an

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[*] So in original.

examination of corporations, firms, or individuals doing a banking business shall make an examination and report of every association organized under the laws of this state for the purposes named in section one (1) of this act [363], as often as shall be deemed necessary and proper and at least once a year, and the rights, powers, duties, privileges, and compensation of such person or persons in connection with such examinations, shall be the same as is or may be provided by law with reference to examinations of banks and corporations, firms, or individuals transacting a banking business; and such association shall pay the same fees for such examinations as is or may be provided by law in case of the examinations of banks.

374. Whenever it shall appear to the auditor of public accounts, state treasurer, attorney general, or any two of them, from any examination or report provided for by this act, that any building, homestead, or other association organized under the laws of this state for the purposes set forth in section one (1) of this act [363], is conducting its **business** in an **unsafe** or unauthorized manner, or is jeopardizing the interests of its members, or that it is unsafe for such association to transact business, they shall communicate such facts to the attorney general, who shall thereupon apply to the supreme court or to the district court of the county where such association is located, or to a judge of either of said courts, for the appointment of a **receiver** to take charge of and wind up the business of such association; and if such fact or facts be made to appear, it shall be sufficient to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

375. It shall be unlawful for any corporation hereafter organized under the laws of this state to use the words "Loan and Building Association" or "Building and Loan Association" as a part of its corporate **name** unless it shall have complied substantially with the requirements of this act; and every such corporation **using** such words **unlawfully** as part of its corporate name shall be **fined**, at the discretion of the court, in any sum not exceeding twenty-five ($25) dollars for each day it shall so unlawfully use such words as part of its corporate name.

376. Any **association now organized** in conformity to existing laws of this state for the purposes set forth in section one (1) of this act [363], which shall voluntarily comply with all the requirements of this act, shall be entitled to all the benefits and privileges herein granted; any such association now organized shall be required to comply with the provisions of this act in the following particulars: It shall, within ninety days after this act shall have become a law, file with the auditor of public accounts a certified copy of its articles of incorporation, constitution, and by-laws, shall make and publish reports in full compliance with section ten (10) hereof [371], shall be subject to examination in all respects as provided in section twelve (12) hereof [373], and its affairs may be wound up in the manner provided in section thirteen (13) of this act [374], and before any amendment to either its articles of incorporation, constitution, or by-laws, hereafter made, shall become operative, a copy of such amendment shall be filed with the auditor of public accounts; and the auditor, together with the state treasurer and attorney general, shall examine the same, and if they or any two of them shall find that such amendment does not introduce any unjust or inequitable feature or provision, they or any two of them shall issue their certificate of approval and such amendment shall become valid; but if they or any two of them withhold such certificate, such amendment shall be of no effect.

377. [**Foreign Association.**]—Every corporation, company, or association contemplating doing business in this state and having for a part of its title or name the words "Loan and Building Association," "Building and Loan Association," "Savings and Loan Association," or "Co-operative Bank, Saving, and Investment

Company," and every corporation, company, or association whose stock is payable by an accumulating fund in regular or stated periodical installments, and every corporation, company, or association doing a business in a form and character similar to that authorized to be done by section one (1) of this act [363], shall, if organized or incorporated in any country, state, or territory other than the state of Nebraska, be known in this act as a foreign building and loan association.

378. It shall not be lawful for any foreign building and loan association, directly or indirectly, to transact any business in this state without first procuring a **certificate of approval** and authorization from the auditor of public accounts, state treasurer, and attorney general, or any two of them. Before obtaining such certificate such foreign building and loan association shall furnish the auditor with a statement sworn to by the president or secretary of the association, which statement shall show: The name and locality of the association and itemized account of its actual financial condition and the amount of its property and liabilities, the amount and number of shares subscribed, the amount which has been paid in on such shares, the number of shares redeemed, the estimated cash value of each share of its stock, and all such other information touching its affairs as said officers, or any two of them, may require. Such foreign building and loan association shall also file with the auditor of public accounts a certified copy of the laws of the state, territory, or government under which it is incorporated, and of its charter or articles of incorporation and of its constitution and by-laws and all amendments thereto, and shall appoint an attorney in each county in which it transacts or solicits business who shall be a resident of such county, and shall file with the auditor of public accounts a written instrument, duly signed and sealed, authorizing such attorney of such associations to acknowledge service of process in behalf of such association, consenting that service of process, mesne or final, upon such attorney shall be taken and held as valid as if served upon the association according to the laws of this or any other state, and waiving all claim or right of error by reason of such acknowledgment of service. If after examination of such statements and certified copies of instruments, and after said association shall have complied with the requirements of this act as to the appointment of an attorney or attorneys, the auditor of public accounts, state treasurer, and attorney general, or any two of them, shall be satisfied that such association is solvent and that the capital and investments are secure, and that the laws, charters, articles of incorporation, constitution, and by-laws governing it afford as ample protection to the interests of its members as is afforded by the laws of this state to members of associations hereafter incorporated under the laws of the state of Nebraska for the purpose mentioned in section one of this act, then the auditor of public accounts, state treasurer, and attorney general, or any two of them, may grant such association a certificate of approval authorizing it to transact business till the 31st day of January of the ensuing year, in those counties of this state in which it shall have appointed a resident attorney as above provided.

379. The **statements** required of foreign building and loan associations shall **be renewed** annually in January in such manner as required by this act and shall be made at such other times as the auditor of public accounts, state treasurer, and attorney general, or any two of them, may deem it expedient to demand the same, and the auditor of public accounts, state treasurer, and attorney general, or any two of them, may at any time revoke the certificate of approval and authorization of any such association for cause.

380. [**Unauthorized Business—Penalty.**]—Any person doing business or attempting to do business in this state for any foreign building and loan association which shall not at the time be the holder of a valid certificate of approval and

authorization, as provided for in section seventeen (17) of this act [378], shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand ($1,000) dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court.

Insurance Companies.

I. ORGANIZATION, ETC.

Secs. 381 to 419. "An act regulating insurance companies." In force June 1, 1873. G. S. p. 429.

381. That hereafter, when any number of persons associate themselves together for the purpose of **forming** an insurance **company,** for any other purpose than life insurance, under the provisions of chapter twenty-five of the Revision of 1866, and all acts amendatory and supplementary thereto, they shall **publish** a **notice** of such intention once in each week, for four weeks, in some public newspaper in the county in which such insurance company is proposed to be located; and they shall also make a certificate under their hand, specifying the name assumed by such company and by which it shall be known, the object for which said company shall be formed, the amount of its capital stock, and the place where the principal office of said company shall be located, which certificate shall be acknowledged before and certified by some notary public, or clerk of court of record, and forwarded to the auditor of state, who shall submit the same to the attorney general of state for examination, and if it shall be found by the attorney general of state to be in accordance with the provisions of this act, and not in conflict with the constitution and laws of the United States and this state, he shall make certificate of the facts and return it to the auditor of state, who shall reject the name or title applied for by any company when he shall deem the same too similar to any one already appropriated by any other company, or likely to mislead the public.

382. **When** the said certificate of the said company shall have received the approval of the attorney of state and auditor of state, the said company shall cause the same to be recorded as now required by law for recording articles of incorporation; and said persons, when incorporated, and having in all respects complied with the provisions of this act, are hereby **authorized** to carry on the business of insurance, as named in such certificate of incorporation, and by the name and style provided therein, and shall be deemed a **body corporate** with succession, they and their associates, successors, and assigns, to have the same general corporate powers, and be subject to all the obligations and restrictions of said chapter twenty-five of the Revision of 1866 [ch. 9, this stat.], and of such as may be amendatory or supplementary, except as may be herein otherwise provided.

383. No joint stock company shall be incorporated under the provisions of this act with a smaller **capital** than one hundred thousand dollars, nor more than one million dollars, as may be specified in the certificate of incorporation, which **stock** shall be divided into shares of one hundred dollars each, of which capital at least fifty per cent shall be fully paid up in cash, and that for the remainder of its capital there are in its possession notes of its stockholders, secured by at least one surety or by mortgages on unincumbered real estate, within this state, worth at least twice the amount of such notes, which notes or other security shall be approved by the state auditor; nor shall any company on the plan of mutual insurance commence business in this state until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which notes of solvent parties, founded

upon actual and *bona fide* applications for insurance, shall have been received; no one of the notes received as aforesaid shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk or made by the same person or firm, except where the whole amount of such notes does not exceed the sum of five hundred dollars; nor shall any note be regarded or represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company; and no **notes** shall be accepted as part of such capital stock unless the same shall be accompanied by a certificate of a justice of the peace, notary public, or clerk of the district court of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same, in property not exempt from execution by the laws of their state; and no such note shall be surrendered while the policy for which it was given continues in force.

384. Having published the notice and filed the publisher's affidavit of the publication thereof with the auditor of state, together with the certificate, as required by the first section of this act [381], the persons named in the certificate of incorporation, or a majority of them, shall be commissioned to open **books for** the **subscription** of stock to the company, at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed; or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions and enter into agreement in the manner and to the extent specified in the third section of this act.

385. The affairs of any company organized under the provisions of this act shall be managed by not more than twenty-one nor fewer than five **directors**, all of whom shall be stockholders; within thirty days after the subscription books shall have been filled, a majority of the subscribers shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote; and the directors then elected shall continue in office until their successors have been duly chosen and have accepted the trust.

386. It shall be lawful for any insurance company organized under this act, or incorporated under any law of this state, to **invest** its **capital and** the **funds** accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate, within the state of Nebraska, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies and the policy or policies transferred to said company, and also in stocks of this state or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this state, which may have been therefore authorized to be issued by the legislature of this state, and to lend the same, or any part thereof, on the security of such stock, or lands, or treasury notes, or upon the bonds and mortgages as aforesaid, and not otherwise; and to change and reinvest the same in like securities, as occasion may from time to time require; but any surplus money over and above the paid up capital stock of any such company organized under this act or incorporated under any law of this state may be invested in or loaned upon the pledge of public stocks of the United States or any of the stock, or stocks, bonds, or other evidences of indebtedness of any solvent, dividend-paying institution incorporated under the

laws of this state, or the United States, except their own stock; *Provided, always*, That the current market value of such stock, bonds, or other evidences of indebtedness shall be at all times, during the continuance of such laws, at least twenty per cent more than the sum loaned thereon.

387. Upon receiving notification that the requirements of the preceding sections have been complied with, the **auditor** of state shall make an **examination,** or cause one to be made by some disinterested person officially appointed by him for that purpose, and if it shall be found (if the examination shall be made other than [by] the auditor, then the finding shall be certified under oath) that the capital herein required by the company named, according to the nature of the business proposed to be transacted by such company, has been paid in and possessed by it in money, or in such stocks, notes, bonds, or mortgages as are required by the third and sixth sections of this act [383–386], then he shall so certify; and if the examination be made by other than the auditor, then the finding shall be certified under oath; or, if it is proposed to be a mutual insurance company, that it has received and is in actual possession of the capital, premiums, or *bona fide* engagements of insurance, or the securities, as the case may be, to the extent and value required by the third and sixth sections of this act, the name and residence of the maker of each premium note forming part of the capital of any such proposed insurance company, and the amount of such note shall be returned to the auditor. The corporators or officers of any such company or proposed mutual company contemplated by this act shall be required to certify under oath, to the auditor of state, that the capital exhibited to the person making the examination directed in this section was *bona fide* property of the company so examined; the certificates above contemplated shall be filed in the office of said auditor, who shall thereupon deliver to such company a certified copy of the same, with his written permission for them to commence business as proposed in their written **certificate** of incorporation, which, on being placed on record in the office of the recorder of the county in which the company is to be located, by the recorder, in a book prepared by him for that purpose, shall be their authority to commence business and issue policies; and such certified copy of said certificate may be used in evidence for or against said company with the same effect as the originals.

Mutual companies must have the auditor's certificate. **18,** 276 (25 N. W., 81).

388. **[What Insurable.]**—It shall be lawful for any company organized under this act, or doing business in this state: *First*—To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be. *Second*—To make insurance on the health of individuals, and against the personal injury, disablement, or death, resulting from traveling or general accidents by land or water. *Third*—To insure the fidelity of persons holding places of public or private trust. *Fourth*—To receive on deposit and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property. *Fifth*—To insure horses, cattle, and other stock against loss or damage by accident, theft, or any unknown or contingent event whatever which may be the subject of legal insurance; to lend money on bottomry or *respondentia*, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have made on mortgage, bottomry, or *respondentia;* and generally to do and perform all other matters and things proper to promote these objects; *Provided*, That no companies shall be organized to issue policies of insur-

ance for more than one of the above five mentioned purposes; and no company that shall have been organized for either one of said purposes shall issue policies of insurance for any other; and no company organized under this act, or transacting business in this state, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent on its paid up capital, unless the excess shall be reinsured by the same in some other good and reliable company; *And provided,* That the restriction as to the amount of risk any company shall assume shall not apply to companies organized to guarantee the fidelity of persons in places of public or private trust, nor to companies that receive on deposit and guarantee the safe keeping of books, papers, moneys, and other property.

Parol contract to insure, not merged in policy delivered after fire, and so written as to have expired before that event. **27,** 549, 552, (43 N. W., 351). A policy covering realty and various classes of personalty not specified is not entire; mortgage of either in violation of policy will not prevent recovery as to the other. **27,** 527 (43 N. W., 340). Policy not avoided by false statement of insured as to amount of loss, if it is actually in excess of policy, though latter provides for forfeiture in such case. **27,** 649, 654-7 (43 N. W., 401).

389. The annual meeting for the **election of directors** shall be holden during the month of January, as the by-laws of the company may direct; *Provided, however,* That if for any cause the stockholders shall fail to elect at any annual meeting, then they may hold a special meeting some day subsequent thereto for that purpose, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company shall be located, and the directors chosen at any such annual or special meeting shall continue in office until the next annual meeting, and until their successors duly elected shall have accepted.

390. The **directors** shall choose by ballot a president from their own number, and shall fill all **vacancies** which shall arise in the board or in the presidency thereof, and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this act.

391. The **directors** of any such company shall have **power** to appoint a secretary and any other officer or agents necessary for transacting the business of the company, paying such salaries and taking such securities as they may deem reasonable; they may ordain and establish such **by-laws** and regulations, not inconsistent with this act or with the constitution and laws of the United States and of this state, as shall appear to them necessary for regulating and conducting the business of the company; and it shall be their duty to keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders, and to the inspection of persons invested by law with the right thereof.

392. All **policies** or contracts of insurance made or entered into by the company may be made either with or without the seal of said company; but said policies shall be subscribed by the president or such other officer as may be designated by the directors for that purpose, and shall be **attested** by the secretary thereof.

393. **Transfers of stock** may be made by any stockholder or his legal representative, subject to such restrictions as the directors shall, from time to time, establish in their by-laws, except as hereinafter provided.

394. Whenever any company organized under this act, with less than the maximum capital limited in section three thereof [383], shall, in the opinion of the directors thereof, require an **increased** amount of **capital,** they shall, if authorized by the holders of a majority of the stock to do so, file with the auditor of state a certificate setting forth the amount of such desired increase, not exceeding said maximum, and thereafter such company shall be entitled to have the increased amount of capital fixed by said certificate; and the examination of securities composing the capital

stock thus increased shall be made in the same manner as provided in section seven of this act [387], for the capital stock first paid in.

395. It shall not be lawful for the directors, trustees, or managers of any insurance company organized under this act, or incorporated under any law of this state, to make any **dividends** except from the surplus profits arising from their business and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired risks and policies, which amount so **reserved** is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks, and book accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividends made contrary to these provisions shall subject the company making it to a forfeiture of their charter.

396. No company organized under this act shall purchase, hold, or convey any **real estate,** save for the purposes and in the manner herein set forth, to-wit: *First*—Such as shall be requisite for its convenient accommodation in the transaction of its business. *Second*—Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due; or, *Third*—Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due; or, *Fourth*—Such as shall have been purchased at sales or upon judgments, decrees, or mortgages obtained or made for such debts. And it shall not be lawful for any such company to purchase, **hold**, or convey real estate in any other case, or for any other purpose, or acquired in any other manner, except that it may **convey** real estate which shall be found in the course of its business not necessary for its convenient accommodation in the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years, after the same shall have been deemed by the auditor of state unnecessary for such accommodation, unless the company shall procure a certificate from the said auditor that the interest of said company will materially suffer by a forced sale, in which event the sale may be postponed for such a period as the said auditor shall direct in said certificate.

397. All **notes** deposited with any mutual insurance company, at the time of its organization, as provided for in section three hereof [383], shall remain **as security** for all losses and claims, until the accumulation of the profits invested as required by the sixth section of this act [386] shall equal the amount of cash capital required to be possessed by stock companies organized under this act, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance company, subsequent to its organization, in addition to the cash premiums, or any insurance effected with such company, may, at the expiration of the time of such insurance, or upon the cancellation by the company of the policy, be relinquished, and given up to the maker thereof, or his legal representatives, upon his paying his proportion of losses and expenses which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given, in addition to the cash premiums, by any person insured in such company; and every person effecting insurance in any mutual company, and also their heirs, executors, administrators, and assigns, continuing to be so insured, shall thereby

become members of said company during the period of insurance, and shall be bound to pay for losses and such necessary expense as aforesaid accruing to said company, in proportion to the amount of his or their deposit note or notes; *Provided*, That any person insured in any mutual company, except in the case of notes required by this act to be deposited at the time of its organization, may at any time return the policy for cancellation, and upon the payment of the amount due at such time upon his premium note, shall be discharged from further liability thereon.

398. The **directors** shall, as often as they deem necessary, after receiving notice of any loss or damage, **settle** and determine the sums to be paid by the several members thereof, as their respective portions of such **loss**, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the company within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after personal demand, or by letter, for payment shall have been made, neglect, or refuse, to pay the sum assessed upon him as his proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit; but execution shall issue for **assessments** and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which the assessment was made; if the whole amount of deposit notes shall be insufficient to pay the loss occasioned, the sufferers insured by the said company shall receive, toward making good their respective losses, a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note or notes.

399. Every insurance **company** hereinafter organized as provided in this act, shall, if it be a mutual company, embody the word "mutual" in its **title**, which shall appear upon the first page of every policy and renewal receipt; and every company doing business as a cash stock company shall, upon the face of its policies, express in some suitable manner that such policies were issued by stock companies.

400. It shall be the duty of the president or of the vice president and secretary of each company organized under this act, or incorporated under any law of this state, or doing business in this state, annually, on the first day of January of each year, or within thirty days thereafter, to prepare under oath and deposit in the office of the auditor of state a full, true, and complete **statement of** the **condition** of such company on the last day of the month preceding that in which such statement is filed, which last statement shall exhibit the following items and facts in the following form, viz.: *First*—The amount of capital stock of the company. *Second*—The names of the officers. *Third*—The name of the company, and where located. *Fourth*—The amount of capital stock paid up. *Fifth*—The property or assets held by the company, specifying the value as near as may be of the real estate owned by such company. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank the same is deposited. The amount of cash in the hands of agents, and in course of transmission. The amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, and its assessed valuation. The amount of all other bonds and loans, and how secured, with the rate of interest thereon. The amount due the company on which judgment has been obtained. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stock owned by the company, specifying the amount, numbers of shares, and par and market value of each kind of stock. The amount of stock held by such

company as collateral security for loans, with amount loaned on each kind of stock, its par and market value. The amount of assessments on stock and premium notes, paid and unpaid. The amount of interest actually due and unpaid. All other securities and their value. The amount for which premium notes have been given, on which policies have been issued. *Sixth*—The liabilities of such company, specifying the losses adjusted and due. Losses adjusted and not due. Losses unadjusted. Losses in suspense, and the cause thereof. Losses resisted and in litigation. Dividends, either in scrip or cash, specifying the amount of each declared, but not due. Dividends declared and due. The amount required to reinsure all outstanding risks on the basis of forty per cent of the premium on all unexpired risks. The amount due banks or other creditors. The amount of money borrowed and the security therefor. All other claims against the company. *Seventh*—The income of the company during the previous year, specifying the amount received for premiums exclusive of premium notes; the amount of premium notes received; the amount received for interest; the amount received for assessment calls on stock or notes, or premium notes. The amount received from all other sources. *Eighth*—The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement. The amount paid for dividends. The amount paid [for] commissions, salaries, expenses, and other charges of agents, clerks, and other employees. The amount paid for salaries, fees, and other charges of offices and directors. The amount paid for local, state, national internal revenue, and other taxes and duties. The amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc. *Ninth*—The largest amount insured in any one risk. *Tenth*—The amount of risks written during the year then ending. *Eleventh*—The amount of risks in force having less than one year to run. *Twelfth*—The amount of risks in force having more than one and not over three years to run. *Thirteenth*—The amount of risks having more than three years to run. *Fourteenth*—The following questions must be answered, viz: Are dividends declared on premiums received for risks not terminated? The auditor of state shall withhold the certificate of authority from any such company neglecting or failing to comply with the provisions of this section.

Applies to foreign companies. Auditor's action cannot be controlled by mandamus unless there is a willful neglect of duty. **25**, 842 (41 N.W., 953).

401. The **auditor** of state is hereby authorized and empowered to address any **inquiries** to any insurance company in relation to its doings and condition, or any other matter connected with its transactions which he may deem necessary for the public good, or for a proper discharge of his dutes; and it shall be the duty of any company so addressed to promptly reply in writing thereto.

402. The statement of any company, the capital of which is composed in whole or in part of notes, shal', in addition to the foregoing, exhibit the amount of **notes** originally **forming** the **capital,** and also what proportion of said notes are still held by such company and considered capital.

403. It shall not be lawful for any insurance company, association, or partnership, organized or associated for any of the purposes specified in this act, incorporated by or organized under the laws of any other state of the United States, or any **foreign** government, directly or indirectly, to take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets of any such **company** as shall be deposited in any other states or territories for the special benefit or security of the

insured therein. Any such company desiring to transact any such business as aforesaid, by an agent or agents in this state, shall appoint one **attorney** in each county in which agencies are established, resident at the county seat, and shall file with the auditor of state a written instrument, duly signed and sealed, authorizing such attorney of such company to acknowledge service of process for and in behalf of such company in this state, consenting that such service of process, mesne or final, upon such attorney shall be taken and held as valid as if served upon the company according to the laws of this state or any other state, and waiving all claim or right of error by reason of such acknowledgment or service, and also a certified copy of their charter or deed of settlement, together with a **statement** under the oath of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts and items as required from companies organized under the laws of this state as per section twenty hereof [400]. Such statement shall also show to the full satisfaction of the auditor of state that said company has deposited, in some one of the United States or territories, a sum not less than twenty-five thousand dollars, for the special benefit or security of the insured therein, and shall file also a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by the liabilities, as stated in section twenty of this act, to the extent of twenty per cent thereof, while such deficiency shall continue.

404. It shall not be lawful for any agent or agents or individual to act for any insurance company or companies referred to in this act, directly or indirectly, in taking risks or transacting business of insurance in this state, without procuring from the **auditor** of state a **certificate** of authority stating that such company has complied with all the requisitions of this act.

405. The **statements** and evidences of investments required of foreign companies as above shall be **renewed** annually in such manner and form as required by this act and as said auditor may direct, with any additional statement of the amount of the losses incurred or premiums received in this state during the preceding period, so long as such agency continues; and the said auditor, on being satisfied that the capital, securities, and investments remain secure as hereimbefore provided, shall furnish a renewal of his certificate as aforesaid.

406. Every insurance **company** organized under the laws of or doing business in this state shall conform to all the provisions of this act, applicable thereto, on or before the first day of April, 1873; and, when necessary, any existing company shall change its charter and by-laws so as to conform thereto, by a vote of a majority of its board of directors; and any president, secretary, or other officer of any company organized under the laws of Nebraska, or any officer or person doing business or attempting to do business in this state for any insurance company organized without this state, failing to comply with any of the requirements of this act, or **violating** any of the provisions thereof, shall be deemed **guilty** of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars and be imprisoned in the county jail for a period of not less than thirty days, nor more than six months.

407. Every **agent** of any insurance company shall, in all **advertisements** of such agency, publish the location of the company, giving the name of the city, town, or village in which the company is located, and the state or government under the laws of which it is organized. The term agent or agents used in the foregoing sections shall include an acknowledged agent or surveyor, or any other person or

persons who shall in any manner, directly or indirectly, transact or aid in transacting the insurance business of any insurance company not incorporated by the laws of this state. The provisions of the foregoing sections relative to foreign companies shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not; *Provided*, That none of the provisions of this clause shall be deemed operative in regard to insurance upon goods or merchandise *in transitu.*

408. It shall be the duty of the auditor of the state, whenever he shall deem it expedient so to do, in his judgment, to appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in this state, to examine into the affairs and condition of any insurance company incorporated or doing business in this state, or to make such **examination** himself; and it shall be the duty of the officers or agents of such company or companies to cause their books to be opened for the inspection of the auditor or the person or persons so appointed, and otherwise facilitate such examination so far as may be in their power so to do; and for the purpose of arriving at the truth in such cases, the auditor, or person or persons so appointed by him, shall have power to examine, under oath, the officers or agents of any company or others, if necessary, relative to the business and condition of said company; and whenever the auditor shall deem it best for the interest of the public so to do, he shall publish the result of such investigation in one or more papers of this state; and whenever it shall appear to the said auditor, from such examination, that the assets and funds of any company incorporated in this state are reduced or impaired by the liabilities of said company, as described under the head of liabilities in the statement required by this act, more than twenty per cent below the paid up capital stock required by this act, may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition; or he shall communicate the fact to the attorney of state, whose duty it shall then become to apply to the district court, or, if in vacation, to one of the judges thereof, for an order requiring said company to show cause why their business should not be closed, and the court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court or judge that the assets and funds of said company are not sufficient as aforesaid, or that the interest of the public require it, the said court or judge shall decree a **dissolution** of said company, and a distribution of its effects; the said court or judge shall have the power to refer the application of the attorney of state to a referee, to inquire into and report upon the facts stated herein.

409. Any company receiving the aforesaid requisition from the said auditor shall forthwith call upon its **stockholders** for such amounts as will make its paid up capital equal to the amount filed by this act, or the charter of said company; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as said auditor shall approve, and it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof, to issue new certificates for such number of shares as such stockholders may be entitled to, in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company, the value of such shares for which new certificate shall be issued to be ascertained under the direction of the said auditor, the company paying for the fractional parts of shares. And it shall be lawful for the directors of such company to create **new stock**, and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make

up the original capital of the company; and in the event of any additional losses, accruing upon new risks taken upon expiration of the period limited by the auditor, in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

410. If, upon such examination, it shall appear to the said auditor that the assets of any company chartered upon the plan of **mutual** insurance under this act are insufficient to justify the continuance of such **company** in business, it shall be his duty to proceed in relation to such company in the same manner as is herein required in regard to joint stock companies; and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the said auditor for filling up the **deficiency** in the capital, and before such deficiency shall have been made up; any transfer of the stock of any company organized under this act, made during the pending of any investigation required above, shall not release the party making the transfer from his liability for losses which may have accrued previous to such transfer.

411. The **auditor** of state shall be authorized to **examine** into the condition and affairs of any insurance company, as provided for in this act, doing business in this state, not organized under the laws of this state, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance company; and whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company, and shall cause the notification thereof to be published in some newspaper in general circulation, published at the state capital; and the agent or agents of such company are, after such notice, requested to discontinue the issuing of any new policies, or the renewal of any previously issued.

412. There shall be paid by every company, association, person or persons, agent or agents, to whom this act shall apply, the following **fees**: For examination and filing of the first application of any company, and issuing of the certificate of license thereon, fifty dollars, which shall go to the **auditor**; for filing each annual statement herein required, twenty dollars; for each certificate of authority, two dollars; for every copy of paper filed as herein provided, the sum of ten cents per folio, and fifty cents for certifying the same and affixing the seal of office thereto; all of which fees shall be paid to the **officer** required to perform the duties.

Auditor must account for *all* fees. **12**, 176 (10 N. W., 703).

413. Whenever the existing or future laws of any other state of the United States shall require of insurance companies incorporated by or organized under the laws of this state, having agencies in such other state, or of the agents thereof, any **deposit** of **securities** in such state, for the protection of policy-holders, or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license-fees, or otherwise greater than the amount required for such purposes, from similar companies of other states, by the then existing laws of this state, then, and in every such case, all companies of states establishing, or having therefore established, an agency or agencies in this state shall be and are hereby required to make the same deposit, for a like purpose, with the auditor of this state, and to pay said auditor for taxes, fines, penalties, certificates of authority, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed upon or required by the laws of such state of the companies of this state, or the agents thereof.

414. It shall be the duty of every insurance company of the kind provided in

this act, doing business in this state, organized under the laws of this state or any other state or country, to **publish** once, annually, in two newspapers of general circulation, one of which newspapers shall be published at the capital of the state (and in case of companies organized in the state of Nebraska, one of which shall be published in the county where the principal office is located), a **certificate** from the auditor of state that such company has in all respects complied with the laws of this state relating to insurance.

415. The necessary expenditures of any **examination** made or ordered to be made **by** the **auditor** of the state, under this act, shall be certified to by him and paid on his requisition by the company which is the subject of such examination; *Provided*, That the auditor of state shall have the power, upon receiving information that the capital of any company is impaired, to call upon any such company for a full statement of its condition, and in event of refusal or neglect of any company to answer the requisition of the auditor as aforesaid, he shall proceed to make the examination required by this act, and to take the necessary action to terminate the business of said company in this state.

416. It shall be the duty of the auditor of state to cause to be prepared and **furnished** to each of the companies organized under the laws of this state, and to attorneys or agents of companies incorporated by other states and foreign governments, who may apply for the same, **printed forms** of statements required by this act, and he may from time to time make such changes in the form of these statements as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore enumerated.

417. It shall be the duty of the **auditor** of state to cause the information contained in the statements required of the companies organized in this state to be arranged in tabular form, and prepare the same in a single document for printing, and submit the same to the legislature as a portion of his regular **report** to that body.

418. It shall not be lawful for any company organized upon the **mutual plan** to do business and take risks upon the **stock plan,** neither for a company organized as a stock company to do business upon the plan of a mutual insurance company.

419. Nothing in this act shall be so construed as to prevent any number of persons from making **mutual** pledges and giving valid obligations to each other for their own insurance from loss by fire, lightning, tornadoes, cyclones, wind storms, hail, or death; but such association of persons shall in no case insure any property not owned by one of their number, and no life except that of their own number, nor shall the provisions of this act be applicable to such **associations,** or companies; *Provided*, Such associations or companies shall receive no premiums, make no dividends, or pay in any case more than two (2) dollars per day to any of their officers for compensation, and then only when actually employed for the association or company, nor shall they hire any agents or solicitors; *Provided further*, That no such company or associations shall ever make any levies or collect any money from its members except to pay for losses on property or lives insured, and such expenses as are herein provided for.

Amended 1883, p. 236; 1889, p. 426.

II. STATEMENT TO AUDITOR, ETC.

Secs. 420 to 433 formed secs. 1 to 14, ch. 25, R. S. 1866, p. 187.

420. It shall be the duty of each and every insurance company incorporated under the laws of this state to **file** with the auditor of the state a full and specific

statement of the amount of cash paid in upon said stock; the amount of stock not paid for in cash; the amount secured by mortgages or pledges of real estate; the names and residences of the stockholders in said company, with the amount of stock owned or held set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security, also set opposite the name of each; the names of all the officers and agents of the company wherever residing; the amount of policies issued by and outstanding against the company, at the date of said report; the amount of premiums received by said company during the preceding six months; the amount of cash on hand; the amount of bills payable and receivable at the date of said statement; the amount of real estate owned by said company, where held and owned, and in what manner said real estate became vested in said company which report and statement shall be verified by the oath of the president and secretary of the company.

421. It shall be the duty of every insurance company now created, or that may hereafter be created, under the laws of this state, to file a **semi-annual statement** of the affairs of said company, with the auditor of the state, on the first day of January and July in each year, which statement shall be verified by the oath of the secretary of the company. Such statement shall contain: *First*—The name and locality of the company. *Second*—The amount of capital stock of said company. *Third*—The amount of its capital stock paid up. *Fourth*—The assets of the company, including—I. The amount of cash on hand. II. The amount of cash in hands of agents. III. The real estate unincumbered. IV. The bonds and notes of the company, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for *bona fide* loans. V. Debts of the company secured by mortgage. VI. Debts otherwise secured. VII. Debts for premiums. VIII. All other securities. *Fifth*—The amount of liabilities due or not due to banks or other creditors by the company. *Sixth*—Losses adjusted and due. *Seventh*—Losses adjusted and not due. *Eighth*—Losses unadjusted. *Ninth*—Losses in suspense. *Tenth*—All other claims against the company. *Eleventh*—The greatest amount insured by any one risk. And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the state, and such company shall pay for said publication.

422. A **failure to comply** with the provisions of the two preceding sections shall subject the president and secretary of any company, each, individually, to the **penalty** of one hundred dollars, to be recovered in an action at law in the name of any citizen of the state, one-half of the same to the use of the state, and the other moiety to the use of the informer.

423. It is declared unlawful for any insurance company in this state to purchase or hold any **real estate** save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said company for any other purposes are hereby declared to be void.

424. It shall not be lawful for any agent or agents of any insurance company incorporated by any other state or territory, directly or indirectly, to take risks or transact any business of insurance in this state without first procuring a **certificate** from the auditor of the state; and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement, under the oath of the president or secretary of the company for which he or they may act, which statement shall show: *First*—The name and locality of the company. *Second*—The amount of its capital stock. *Third*—The amount of its capital stock paid up. *Fourth*—The assets of the company, including—I. The amount of cash on hand and in the hands of

agents and other persons. II. The real estate unincumbered. III. The lands owned by the company, and how they are secured, with the rate of interest thereon. IV. The debts of the company secured by mortgage. V. Debts otherwise secured. VI. Debts for premiums. VII. All other securities. *Fifth*—The amount of liabilities due or not due to banks or other creditors by the company. *Sixth*—Losses adjusted and due. *Seventh*—Losses adjusted and not due. *Eighth*—Losses unadjusted. *Ninth*—Losses in suspense, waiting for further proof. *Tenth*—All other claims against the company. *Eleventh*—The greatest amount insured by any one risk. *Twelfth*—The greatest amount allowed by the rules of the company to be insured in any one city, town, or village. *Thirteenth*—The greatest amount allowed to be insured in any one block. *Fourteenth*—The act of incorporation of such company. Which **statement** shall be filed in the office of said auditor, together with a written instrument under the seal of the company, signed by the president and secretary, authorizing such **agent to acknowledge** service, consenting that **service** of process upon such agent shall be taken and held to be as valid as if served upon the company, according to the laws of the state, or any state or territory, and waiving all claims of errors by reason of such service; and no insurance company, or agents of any insurance company, incorporated by any other state or territory, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real estate worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor of the state, and furnishing him with satisfactory evidence of such instrument, as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same; and the auditor may demand and receive two dollars for every such certificate, to be paid by the company.

425. It shall be unlawful for any incorporated company, or association, partnership, firm, or individual, or any member, or agent or agents thereof, or for any agent or agents of any company incorporated by any **foreign** government, other than a state of this Union, to transact any business of insurance in this state without procuring a **certificate** of authority from the auditor of this state; such **company,** association, partnership, firm, or individual, or any agent or agents thereof, having first filed, under oath, in the office of said auditor, a **statement** setting forth the charter or act of incorporation of any and every such incorporated company, and the by-laws, copartnership agreement, and articles of association of any and every such unincorporated company, association, partnership, or firm, and the name and residence of such individual and the name and residence of the members of every such partnership or firm; and the matters required to be specified by the provisions of this chapter, and the written authority therein mentioned; and furnish evidence, to the satisfaction of the auditor of the state, that said company has invested in stocks of some one or more of the states of this Union, or of the United States, the amount of one hundred thousand dollars, and that such stocks are held by citizens of the United States, or in bonds or mortgages of real estate situated in the United States, fully securing the amount for which the same is mortgaged, or bonds of cities of the United States, the aggregate market value of the investment of the company in which shall not be less than one hundred thousand dollars; and such incorporated company or unincorporated company, association, partnership, firm, or individual, or any agent or agents thereof, filing said statement and furnishing evidence of investment as aforesaid, shall be entitled

to a certificate of authority for such body or individual, in like manner as is provided in this chapter.

Includes life insurance companies. Bankable notes not considered as capital. **21**, 502 (32 N. W., 641). This includes mutual companies. **18**, 276 (25 N. W., 81).

426. The **statement** and evidences of investment required by this chapter shall be renewed **annually** in the month of January of each year. The auditor of the state, upon being satisfied that the capital, securities, and investments remain secure, shall furnish a renewal of certificates as aforesaid; and the company, agent or agents obtaining such certificate shall file the same, together with the statement upon which it was obtained or renewed, in the office of the auditor of state.

427. Any person or firm in this state **who** shall receive or receipt for any money on account of or for any contract of insurance made by him or them, or for any such insurance company or individual aforesaid, or who shall receive or receipt for money from other persons, to be transmitted to any such company or individual aforesaid, for a policy or policies of insurance or any renewal thereof, although such policy or policies of insurance may not be signed by him or them, as agent or agents of such company, or who shall in anywise, directly or indirectly, make or cause to be made any contract or contracts of insurance, for or on account of such company aforesaid, shall be deemed to all intents and purposes an **agent** or agents of such company, and shall be subject and liable to all the provisions of this chapter.

428. **Copies** of all papers required by this chapter to be deposited in the office of the auditor of this state, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as **evidence** in all courts and places in the same manner and have the same force and effect as the original would have if produced.

429. Any **person** or persons **violating** the provisions of this subdivision shall, upon conviction thereof, in any court of competent jurisdiction, be **fined** in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court. Violations of the provisions of this subdivision may be prosecuted by information filed by the prosecuting attorney of the proper county, or by indictment of the grand jury.

430. Any insurance company complying with the provisions of this subdivision, and securing the **certificate** of the auditor for any of its agents, shall not be required to furnish the single **statement,** and evidences required hereby for more than one of such agents, which, being filed with the auditor of this state, shall be deemed a sufficient compliance for its free transaction of business in this state.

431. If any insurance company, firm, or individal, or their agent or agents, having filed its or their statement as required by this subdivision, and conformed to the requirements thereof, shall have on deposit in any other state or territory, or elsewhere than in this state, any portion of its capital or earnings as a **guarantee fund** for the exclusive benefit or security of persons insured in such state or territory, or other place, it shall be the duty of the auditor of the state to withhold from such body or individual, so alienating any such portion of their capital or resources, the certificates and authority in this subdivision provided for, until such body or individual shall file with the auditor of the state a statement, duly verified by the oath or affirmation of the president or secretary of such incorporated company, association, partnership, or firm, or of such individual, showing the amount of premiums received in this state by such company during the year ending on the first of January next preceding the filing of said statement, and shall **deposit in this state,** in such manner as the auditor of the state shall direct, five per cent of the amount received in money, or any solvent state or United States, stocks of at

least par value, or mortgages on real estate situated in this state, of at least double the value for which the same is mortgaged; which statement and deposit shall be so made from year to year, at the time of each renewal or original grant of authority by said auditor, until the sum of forty thousand dollars is deposited as aforesaid, which said sum and every yearly part thereof deposited as aforesaid, shall be held under control of such auditor of the state, as a guarantee fund for the benefit of such persons as may be in any manner insured in their property by such company in this state, and the same or any part of the sums so deposited shall not be drawn out of the depositors until all claims for losses or premiums, or risks unexpired, shall be paid and discharged, or until all deposits made in other states, territories, or other places not within this state shall be withdrawn; and **in case of** the **insolvency** of any such company, the sums so deposited as aforesaid shall be applied by the auditor of the state, *pro tanto,* toward the payment of all claims against such body or individual filed in his office duly liquidated and authenticated, and losses and premiums or risks unpaid on policies issued within six months after such insolvency may occur. Any such body or individual shall be deemed insolvent, upon failure to pay any undisputed loss insured against within this state for the space of ninety days after final judgment for the amount of any loss so insured against, when no appeal shall have been taken from such judgment by either party or other proceeding begun to vacate, modify, reverse, or review such judgment, or to arrest the same, or to obtain a new trial. Such body or individual shall be entitled to receive the interests or dividends on such stock so deposited from time to time as the same may become due. This section shall not apply to any of the aforesaid bodies or individuals who have made no such deposits as in this section mentioned, elsewhere than in this state.

432. **Mutual** insurance **companies** incorporated by any state or territory other than the state of Nebraska, upon filing in the office of the auditor the act of incorporation of said company, together with a written instrument under seal of said company, signed by the president and secretary of said company under oath, certifying that said company is possessed of a capital of at least one hundred thousand dollars, secured by lien on real estate worth at cash valuation at least five times the amount of said capital, and not encumbered to more than one fourth of said cash valuation, shall be entitled to a certificate from said auditor with authority to transact business of insurance in this state, and said company shall be exempt from the provisions of this subdivision, with the exception of the publication of statement and certificate of the auditor.

433. It shall be the **duty of** the **agent** or agents in either of the foregoing sections mentioned, before taking any risks or transacting any business of insurance in this state, to **file** in the office of the county clerk of the county of which he or they may desire to establish an agency for any such company, a copy of the **statement** required to be filed with the auditor of the state as aforesaid, together with a certificate of such auditor, which shall be carefully preserved for public inspection by said clerk; and said statement and certificate shall be published one week in one daily and four weeks in one weekly newspaper, printed and published in the county in which such agent or agents has or have his or their office of business as such agents; and if no daily paper is published in such county, then such publication shall be sufficient if made in one weekly newspaper as aforesaid; but if no weekly newspaper be printed or published in such county, then such publication shall be made in one weekly newspaper of this state of most general circulation in such county.

III. MISCELLANEOUS PROVISIONS.

Sec. 434. "An act to provide for canceling insurance policies." 1885, p. 267. In force February 28.

434. Any person, company, association, or corporation transacting the business of fire, or fire, wind, storm, and tornado insurance, in this state, shall **cancel** any **policy** of insurance hereafter issued or renewed, at any time, **by request** of the party insured, or his legal representative, and shall return to the said party, or his representative, as aforesaid, the net amount of premium received by the company, after deducting the actual compensation of the agent or solicitor for securing the issue of said policy, and also deducting the customary short-rate premium for the expired time of the full term for which said policy was issued or renewed, anything in the policy to the contrary notwithstanding.

Secs. 435 to 437. "An act defining the liability of fire insurance companies in certain cases." 1889, p. 425. In force July 1.

435. Whenever any policy of insurance shall be written to insure any real property in this state against loss by fire, tornado, or lightning, and the property insured shall be wholly destroyed, without criminal fault on the part of the insured or his assigns, the **amount** of the insurance written **in** such **policy** shall be taken conclusively to be the **true value** of the property insured, and the true amount of loss and measure of damages.

436. This **act** shall **apply** to all policies of insurance hereafter made or written upon real property in this state, and also to the **renewal,** which shall hereafter be made, of all policies heretofore written in this state, and the contracts made by such policies and renewals shall be construed to be contracts made under the laws of this state.

437. The court, upon rendering judgment against an insurance company upon any such policy of insurance, shall **allow** the plaintiff a reasonable sum as an **attorney's fee,** to be taxed as part of the costs.

Secs. 438 to 441. "An act to require insurance companies organized under the laws of other states and doing business in Nebraska to pay a duty or rate for the **support of fire companies** comprising the fire department of any city or village." 1889, p. 422. In force July 1.

438. There shall be **paid** on the first days of July and January in each year, to the treasurer of any city or village organized under the laws of this state, **for** the **use,** support, and benefit of the companies composing such **fire department,** by every underwriter who shall effect any fire insurance, and by every person who shall act as agent for any fire insurance corporation, company, association, or underwriter whatever in such city or village, a duty or rate of two per centum upon the amount of all premiums which during the year, or a part of a year, ending on the next preceding first day of July, or January, shall have been received by such underwriter or agent, or by any other person for him, or shall have been agreed to be paid upon any insurance effected, or agreed to be effected, or promised by him as such agent or otherwise against loss or injury by fire in any such city or village.

439. No person shall in any such city or village, as underwriter, **agent,** or otherwise, effect, or agree to effect, or procure to be effected, any insurance upon which the above duty or rate is required to be paid until he shall have executed and delivered to such treasurer a **bond** in the sum of one thousand dollars, with such sureties as such treasurer shall approve, conditioned that he will render to such treasurer on the first days of July and January in each year a just and true account, verified by his affidavit, of all premiums which during the six months immediately preceding such report shall have been received by him, or any other person for him, or agree to be paid for any insurance against loss or injury by fire in any such city or village, which shall have been effected or agreed to be effected by him, and that

he will semi-annually, on the first days of July and January in each year, pay to the said treasurer two per centum upon the full amount of such premiums, for the use, support, and benefit of such fire departments as aforesaid.

440. Every person who shall effect or agree to effect any fire insurance in any such city or village without having executed and delivered such bond, or who shall willfully omit or refuse to pay such duty or rate, shall be deemed guilty of a misdemeanor, and for each offense shall be subject to indictment, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding six months, or both, in the discretion of the court. Said duty or rate may also be recovered of such fire insurance corporation, company, or association, or its agent, or both, by action in the name and for the use of such fire department, as for money had and received for its use, support, and benefit as aforesaid.

441. The requirements of this act shall apply only to such cities and villages as have an organized fire department of at least one fire engine or hose company, with not less than ten active members, having at least one good fire engine or hose cart and not less than five hundred feet of sound rubber, leather, or other hose, kept in an engine house fit and ready at all times for actual service, and at least one hook and ladder company with not less than twelve active members, having a good hook and ladder truck, and in case of a paid or partly paid fire department, the buildings, machinery, and material hereinbefore enumerated and the necessary men, teams, and equipments so as to constitute an active and properly equipped department, ready for service at all times.

IV. SPECIAL FORMS OF INSURANCE.

Secs. 442 to 450. "An act to exempt secret societies and associations from the requirements of chapter sixteen (16) of the Compiled Statutes of 1885, to define the duties, powers, and obligations of such societies and associations, and provide penalties for violations thereof." 1887, p. 337. In force June 29.

442. That any secret society or association, the management and control of which is confined exclusively to the membership of any secret society or order, heretofore organized or which may hereafter be organized, which, in addition to the benevolent and fraternal features thereof, shall also issue certificates of indemnity calling for the payment of a certain sum known and defined, in case of the death, disability, or sickness of any of its members, to the wife, widow, orphan or orphans, or other persons dependent upon such members, shall be exempt from the provisions of chapter twenty-five (25) of the Revised Statutes of 1866, of the territory, now state of Nebraska, the same being chapter sixteen (16) of the Compiled Statutes of 1885 [ch. 9]; *Provided*, That such secret society or association as aforesaid shall comply with all the requirements of this act.

443. Within thirty (30) days after the taking effect of this act such society, as aforesaid, shall, by its presiding officer, or recording officer, or both of them, file a certificate in the office of the auditor of public accounts, setting forth the total number of members in good standing in such society or association at the date of the taking effect of this act, the name, title, and postoffice address of each of the chief officers of such society or association; the plan of assessment upon which funds are provided to pay the certificate of indemnity issued by such society or association, together with a certified copy of the constitution and by-laws of such society. If, from such statements, the auditor of public accounts shall be satisfied that such society or association has a sufficient membership to pay a certificate so issued by such society or association, in case of the death of any of its members, by its usual method of assessment, he shall issue to such society or association a certificate authorizing it to transact its business for one year.

444. On the first day of January of each year, or within fifteen days thereafter, such society or association shall, by its presiding or recording officer, or both of them, file with the auditor of public accounts a sworn **statement,** setting forth the total number of members in good standing on the first day of January of that year; the total number of members who have been suspended for non-payment of dues or assessments for the twelve months next preceding the date of the report; the name of each member deceased during the year next preceding the date of the report, together with the amount of money paid to each; the number of claims resisted and the reasons for resisting the payment thereof; the total amount collected for the payment of certificates of indemnity hereinbefore provided for; the amount due and unpaid upon certificates of deceased members, the total amount on hand in such fund, and the amount paid out in such fund. If the auditor shall be satisfied that such society or association has a sufficient membership to pay its certficate in full in case of the death of any of its members, by its usual method of assessment, he shall issue his **certificate** authorizing such society or association to transact its business for the term of one year from the first day of January next preceding the date of the report.

445. If at any time the auditor shall be credibly informed that the membership of such society or association has fallen below a number sufficient to produce the amount required to pay a certificate of membership in full, in case of the death of any of its members, he shall cause an investigation to be made of the affairs of such society or association, at the expense of such society or association, and if he shall become satisfied that its membership has fallen below the number required as aforesaid, he shall **revoke** the **certificate** provided for in section three of this chapter, and it shall be unlawful for such society or association to further transact any business within the state of Nebraska.

446. Before any **change in** the constitution or **by-laws** of any such society or association shall take effect, a copy of the same shall be filed in the office of the auditor of public accounts.

447. All **moneys** collected by any such society or association for the payment of its certificates of indemnity shall be **used** for that purpose, and none other.

448. Any **person** or persons **violating** the provisions of this **act** shall, upon conviction thereof, be imprisoned in the penitentiary for not more than five nor less than one year.

449. This **act** shall only **apply** to secret, benevolent, fraternal societies.

450. Any officer of any such society or association, who shall embezzle or appropriate any of the moneys or property of any such society or association to his own use, shall be deemed guilty of **embezzlement,** and shall, upon conviction thereof, be punished accordingly.

Secs. 451 to 469. "An act to authorize the organization of **mutual** insurance **companies.**" 1891 p. 272. In force August 1.

451. That any **number** of persons, not less than twenty (20), residing in this state, who collectively shall own **property** of not less than twenty thousand (20,000) dollars in **value,** which they desire to have insured, may form an incorporated company for the purpose of mutual insurance, against loss by fire, lightning, or tornado.

452. Such persons shall **file** with the auditor of public accounts a **declaration** of their intention to form a company, for the purposes expressed in the preceding section, which declaration shall be signed by at least twenty of the incorporators, and shall contain a copy of the **charter** proposed to be adopted by them. Such charter shall set forth the name of the corporation, the name of the city, town, or

village in which the business office of such company is to be located, and the intended duration of the company, and if such declaration is found conformable to this act, and not inconsistent with the constitution of this state, the auditor shall thereupon deliver to such persons a certified copy of the charter, which, on being filed in the office of the county clerk of the county where the office of such company is to be located, shall be their authority to organize and commence business. Such certified copy of the charter may be used in evidence for or against said company with the same effect as the original.

453. The number of **directors** shall not exceed nine (9), a majority of whom shall constitute a quorum to do business to be elected from the members by ballot, and they shall hold their offices until their successors are elected and qualified.

454. The policy-holders shall elect from their number a **president** and a **treasurer,** and shall also elect a secretary, who may or may not be a member of the company, all of whom shall hold their offices for one (1) year, and until their successors are elected and qualified.

455. The treasurer and secretary shall each give **bonds** to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

456. Such corporation and its directors shall possess the usual **powers** and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution or this act, as may be deemed necessary for the management of its affairs in accordance with the provisions of this act, and may prescribe the duties of its officers and fix their compensation, and to alter and amend its by-laws when necessary.

457. Any person owning property in the territory for which any such company is formed, under such restrictions and qualifications as the by-laws may prescribe, may **become a member** of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto.

458. Such company may issue **policies** only on detached farm dwellings, barns (except livery, boarding, and hotel barns), and other farm buildings, and such property as may properly be contained therein, and also upon horses, mules, cattle, sheep, hogs, and against damage by fire, lightning, or tornado for any length of time, but not to extend beyond the limit and duration of the charter, and for any amount the company may deem safe on any one risk, nor shall any property be insured for more than two-thirds ($\frac{2}{3}$) its actual value. All persons so insured shall give their obligation to the company, in a written or printed application, binding themselves, their heirs and assigns, to pay their *pro rata* share to the company of the necessary expenses, and of all losses by fire, lightning, or tornado which may be sustained by any member thereof during the time for which their respective policies are written and they continue as **members** of the company, and they shall also, at the time of effecting the insurance, pay such percentage in cash and such other charges as may be required by the rules and by-laws of the company; *Provided,* That any company formed under the provisions of this act may in its by-laws limit the percentage of the liability of its members.

459. Any such company may classify the property insured therein at the time of issuing policies thereon under **different rates** corresponding as nearly as may be to the greater or less risk from fire, lightning, or tornado which may attach to each building or personal property insured.

460. **No** such company shall insure any **property beyond** the **limits** of the territory, nor shall it insure any property within the limit of any city or village.

461. Every member of such company who may sustain **loss** or damage by

fire, lightning, or tornado shall immediately notify the secretary thereof, stating the amount of damage or loss claimed, then the person or persons authorized by the by-laws of such company to adjust losses shall proceed to ascertain the amount of such loss or damage and adjust the same. If there is a **failure** of the parties **to agree** upon the amount of such damage or loss, the same shall be submitted to three (3) persons as a committee of reference, one of whom shall be selected by the claimant, one by the company, and the third by such two persons, who shall be sworn to a faithful and impartial investigation and award, and who shall have authority to examine witnesses and to determine all matters in dispute, and shall make their award in writing to the secretary of the company, and such award shall be final. The pay of the membership of such committee shall be two ($2) dollars per day for each day's service so rendered in the discharge of their duties, which shall be paid by the claimant, unless the award of said committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company.

462. Whenever the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the secretary shall make an **assessment** upon all the property insured by the company; *Provided,* That any company may provide in its by-laws for making assessments at stated intervals only, and may also provide that assessments shall be made by the board of directors.

463. It shall be the duty of the secretary, whenever such **assessment** shall have been made, to immediately notify every person composing such company personally, or by a letter sent to his usual postoffice address, of the amount of such loss, and the sum due him as his share thereof, and of the time, and to whom such payment is to be made; but such time shall not be less than twenty (20) nor more than forty (40) days from the date of such **notice.**

464. **Suits** at law may be brought **against** any member of such company, who shall neglect or refuse to pay any assessment made upon him or her, by the provisions of this act, and the directors or officers of any company so formed, who shall willfully refuse or neglect to perform the duties imposed upon them by the provisions of this act, shall be liable in their individual capacity to the person sustaining such loss. Suits at law may also be brought **and** maintained against any such company **by members** thereof for losses sustained, if payment is withheld after such losses become due.

465. It shall be the duty of the secretary to prepare an **annual statement** showing the condition of such company, and the business transacted the preceding year, and present the same at the annual meeting.

466. Any member of such company may withdraw therefrom by surrendering his **policy** for **cancellation** at any time while the company continues the business for which it was organized, by giving notice in writing to the secretary thereof, and paying his or her share of all claims then existing against said company, and a cancellation fee not to exceed one dollar; *Provided,* That by the withdrawal of any such member, the number of members remaining in the company shall not be reduced below twenty, or that the assets will not be reduced below twenty thousand dollars; *Provided further,* That the company shall have power to cancel or terminate any policy by giving the insured notice to that effect, and such cancellation of policy ends his or her membership in such company.

467. It shall be the duty of the president or vice-president and secretary of every such company, on the first day of January each year, or within a month thereafter, to prepare under their own oath, and transmit to the **auditor** of public accounts, a statement of the condition of the company on the last day of the month

preceding, in such form as the law may direct. If, upon **examination**, he is of *opinion that such company is doing business correctly, in accordance with the provisions of this act, he shall thereupon furnish the company a certificate, which shall be deemed authority to continue business the ensuing year. For such examination and certificate the company shall pay one dollar ($1); for agent's certificate of authority, fifty cents (50). Each company shall pay at the time of organization ten dollars ($10) to the auditor, all of which shall be paid into the state treasury and applied to the general fund.

468. Any mutual insurance **company organized** to insure against fire, lightning, or tornado, and **now** doing business in this state under the provisions of section forty (40) of chapter forty-three (43) of the Revised Statutes, ***may,** with the written consent of two-thirds ($\frac{2}{3}$) of the members thereof, **accept** the **provisions of** this **act,** and shall thereupon be governed by its provisions. Before any such company shall be entitled to the benefits thereof the directors, or a majority of them, shall file with the auditor of public accounts the declaration provided for in section two (2) of this act.

469. Such mutual insurance companies shall never make **assessments** upon their members, as provided in section twelve (12) of this act, until loss has first occurred, unles the directors, by a two-thirds ($\frac{2}{3}$) vote, order an assessment. They shall never make any **dividends.**

Secs. 470 to 484. "An act to regulate the admission of foreign surety companies to do business in this state." 1885, p. 183. **In force June 5.**

470. That any **surety company,** incorporated and organized under the laws **of any state** of the United States other than the state of Nebraska, for the purpose of transacting business as surety on obligations of persons or corporations, may transact such business in this state upon complying with the provisions of this act, and not otherwise.

471. No surety company not incorporated under the authority of this state shall, directly or indirectly, take risks or transact business in this state until it shall have first appointed, in writing, the **auditor** of public accounts of this state to be the true and lawful attorney of such company in and for this state, upon whom all lawful process in any action or proceeding against the company may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree on the part of the company that any lawful **process** against the company which is **served on** said attorney shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding against the company in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the said auditor, and copies certified by him shall be received in evidence in all the courts of this state. Service upon such attorney shall be deemed sufficient service upon the company.

472. Whenever lawful **process against** a surety **company** shall be served upon the auditor of public accounts, he shall forthwith forward a copy of the process served on him, by mail, postpaid, and directed to the secretary of the company. For each copy of process the auditor shall collect the sum of two dollars, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as part of the taxable cost, if he prevails in the suit.

473. No person shall act within this state as agent or otherwise in procuring or securing applications for suretyship upon the bond of any person or corporation, or aid in transacting the business of such suretyship for any company incorporated

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* So in original.

or organized under the laws of any other state, unless such company is possessed of two hundred and fifty thousand dollars capital, and unless such **capital** to the extent of one hundred thousand dollars is **invested** in stock created by the laws of the United States or by or under the laws of the state in which such company is located, or in other safe stocks or securities, the value of which at the time of such deposit shall be at or above par, which investments are deposited with the insurance commissioner, auditor, comptroller, or chief financial officer of the state under whose laws such company is incorporated, and the treasurer of this state is furnished with the certificate of such insurance commissioner, auditor, comptroller, or chief financial officer aforesaid, under his hand and official seal, that he, as such insurance commissioner, auditor, comptroller, or chief financial officer of such state, holds in trust and on deposit, for the benefit of all obligees of such company, the surety before mentioned; which certificates shall embrace the items of security so held, and shall state that he is satisfied that such securities are worth one hundred thousand dollars.

474. Every person **who** shall so far represent any surety company established in any other state as to receive or transmit applications for suretyship, or to receive for delivery bonds founded on applications forwarded from this state or otherwise to procure suretyship to be effected by such company upon the bonds of persons or corporations in this state, shall be deemed as acting as **agent** for said company, and shall be subject to the restrictions and liable to the penalties herein made applicable to agents of such companies.

475. Every such **agent,** before transacting any business as aforesaid, shall **deposit** with the auditor of public accounts a copy of the **charter** of the company or corporation for which he is agent as aforesaid, unless a copy thereof has already been deposited with such auditor.

476. Every such **agent** shall also, before transacting any business as aforesaid, **deposit** with the said auditor a **statement,** signed and sworn to by the president and secretary of the company for which he acts, stating the amount of its capital and the manner of its investments, designating the amount invested in mortgages, in public securities, in the stock of incorporated companies, stating what companies, and also the amount invested in other securities, particularizing each item of investment, the amount of existing bonds upon which such company is surety, stating what portion thereof is secured by the deposit with such company of collateral security, the amount of premium thereon, and the amount of liabilities, specifying therein the amount of outstanding claims adjusted or unadjusted, due or not due; *Provided*, however, That not more than one such statement need be filed on behalf of such company.

477. Every such **agent** shall, in the month of January, **annually,** also **deposit** with the said auditor a similar **statement** of the capital of the company which he represents, and the investments and risks as aforsaid, to be made up by the thirty-first day of December next preceding, signed and sworn to as above directed, and the auditor shall annually in the month of February publish an abstract of the statement filed in his office as required by section nine of this act and by this section, and the expense of publishing said abstract shall be paid by such companies; *Provided, however,* That not more than one such statement need be filed by such company in one year.

478. No person shall act as agent as aforesaid for any such surety company in this state unless the **capital stock** of the company of which he represents amounts to the sum of two hundred and fifty thousand dollars actually paid in money and invested exclusively of any obligations of the stockholders of any description.

479. No person shall act as **agent** of any surety company until such company and such agent shall have complied with all the requirements of the laws of this state relating to such companies and their agents, and every person acting without such compliance shall be **fined** one thousand dollars.

480. The **auditor** of public accounts shall annually **examine** the **statements** and returns required to be made by the companies and agents as aforesaid, and if in his opinion any return shall be obscure, defective, or unsatisfactory, he shall immediately require answers, under oath from the agent from whom such obscure, defective, or unsatisfactory returns shall have been made. to such interrogatories as he may deem necessary or proper to be answered in order to explain such return, and exhibit a full and accurate view of the business and resources of the company represented by such agent.

481. Every agent who shall refuse or **neglect to answer** such interrogatories for the space of thirty days, and continue to act as agent as aforesaid, shall be liable to the **penalty** prescribed in section ten of this act [479].

482. The **auditor** of public accounts, either personally or by a committee appointed by him, consisting of one or more persons not directors, officers, or agents of any surety company doing business in this state, may at any time **examine** into the **affairs of** any surety **company** incorporated by or doing business in this state. The officers or agents of said company shall exhibit its books to said auditor or committee, and otherwise facilitate such examination, and the auditor or committee may examine under oath the officers and agents of any such company in relation to its affairs; and said auditor shall, if he deems it for the best so to do, publish the result of such investigation in one or more newspapers published in the state. Whenever it shall appear to the said auditor, from the statement or from an examination of the affairs of any surety company not incorporated under the authority of this state, that such company is insolvent, or is conducting its business fraudulently, or refuses or neglects to comply with the laws of the state relating to surety companies, it shall be the duty of said auditor to **revoke** the **certificate** of authority issued to the agent or agents of any such company, and he shall cause a notice thereof to be published in one or more newspapers published in this state, and the agent or agents of such company after such notice shall transact no further business in this state. All the expenses of an examination made under the provisions of this section shall be paid to the auditor by the company examined.

483. The auditor of public accounts shall **report** to the attorney general any **violation** of the provisions of this chapter which shall come to his knowledge, and the attorney general shall institute the proper legal proceedings in the name of the state against any person violating any such provision.

484. [**Fees.**]—Every surety company not incorporated in this state, applying for admission to transact business therein, shall pay to the auditor of public accounts for the use of the state, for filing copy of its charter or deed of settlement, the sum of thirty dollars; for filing statement preliminary to admission, and for filing each annual statement after admission, the sum of twenty dollars, and for each agent's certificate annually, the sum of two dollars.

Sec. 485. "An act to permit and authorize **plate glass** insurance companies of other states of the Union to transact business in the state of Nebraska." 1889, p. 427. In force May 19.

485. That any company organized under the laws of any state in this Union for the purpose of insuring **plate glass** against accidental breakage exclusively, may transact such business within this state, provided said company has a paid up capital of $100,000.00 or more, deposited with their proper state officials, and fully complying with all the **insurance** laws of this state relating to foreign insurance companies, and especially chapter 43 of the Compiled Statutes [ch. 9] of this state.

Manufacturing Companies.

Secs. 486 to 488 formed secs. 37 to 39, ch. 25, p. 202, R. S. 1866.

486. Whenever any number of persons associate themselves together for the purpose of engaging in the business of manufacturing, they shall, under their hands and seals, make a certificate, specifying the amount of capital stock necessary, the amount of each share, the name of the place where such manufacturing establishment shall be located, and the name and style by which such company shall be known; said certificate shall be acknowledged, certified, and forwarded to the secretary of state, and by him be recorded and copied; and when so **incorporated,** they are hereby authorized to carry on the manufacturing operations named in said certificate of incorporation, and by the name and style provided in said certificate, shall be deemed a body corporate with succession, and they and their associates, successors, and assigns shall have the same general corporate powers as are conferred in this chapter upon bridge companies, and subject to all the restrictions hereafter provided.

487. The **annual meeting** of the stockholders shall be held on the first Monday of January in each year, at which meeting the directors of the company shall be elected, and such other lawful business done as the stockholders shall deem necessary and proper; and should they fail to elect directors at the annual meeting, they shall hold a special meeting at some subsequent time for that purpose, by giving thirty days' notice thereof in some newspaper of general circulation in such county; the directors shall hold their offices until their successors are chosen and qualified, but no person shall be a director after ceasing to be a stockholder. Immediately after the election, the directors shall elect one of their number president of the corporation and may appoint such other officers and agents as they may deem proper to transact their business, and prescribe the amount of compensation to be allowed them for their services, and such **officers,** when required by the by-laws, shall give bonds to the satisfaction of the directors for the faithful discharge of the trust committed to them, and shall have **power** and are hereby authorized to make such rules, regulations, and by-laws as may be necessary for their government, not inconsistent with the constitution of this state. The directors shall have the general management of the affairs of the company, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the stockholders for the time being may prescribe, and may employ the capital and means of the company in such manufactures as they shall deem best for the company, and for the erection and maintenance of such machinery, dams, buildings, races, and water courses, subject always to the control of the stockholders, as may be necessary in the business of manufacturing, but for no other purposes than those connected with and pertaining to said business; they shall cause a record to be kept of all stock subscribed and transferred, and all business transactions, and their books and records shall at all reasonable times be open to the inspection of any and every stockholder; they shall also, when required, present to the stockholders reports, in writing, of the situation and the amount of business of the company, and declare and make such dividends of the profits from the business of the company, not reducing the capital stock while they have outstanding liabilities, as they shall deem expedient.

488. The persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open the **books for** the **subscription** to the capital stock of said company, and at such times and places as they shall deem proper, and the said company are authorized to commence operations upon the subscription of ten per cent of said stock.

Railroads.

I. INCORPORATION, ETC.

Secs. 489 to 497 formed secs. 72 to 80, ch. 25, R. S., 1866, p. 213, entitled "Incorporations."

489. Any number of natural persons, not less than five, may become a **body corporate,** with all the rights, privileges, and powers conferred by, and subject to all the restrictions of this subdivision.

490. Any number of persons as aforesaid, associating to form a company for the purpose of constructing a railroad, shall, under their hands, make a **certificate,** which shall specify as follows: *First*—The name assumed by such company and by which it shall be known. *Second*—The names of the places of the termini of said road, and the county or counties through which said road shall pass. *Third*—The amount of capital stock necessary to construct such road. Such certificate shall be acknowledged before a notary public, and certified by the clerk of the district court in the same manner as is provided for the conveyance of real estate, and shall be forwarded to the secretary of state, who shall record and carefully preserve the same in his office; and a copy thereof duly certified by said secretary, under the seal of the state, shall be *prima facie* evidence of the existence of such corporation.

491. When the foregoing **provisions** have been **complied with,** the persons named as corporators in said certificate are hereby authorized to carry into effect the objects named in such certificate in accordance with the provisions of this subdivision, and they and their associates, successors, and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the objects of the corporation; to make and use a common seal, and the same to alter at pleasure, and to do all needful acts to carry into effect the objects for which it was created. And such company shall possess all the powers and be subject to all the rules and restrictions provided by this subdivision.

No power to contract to sell or dispose of their rights, lines, property, or franchises, or to consolidate, until such road shall have been constructed. 4, 465.

492. Such corporation shall be **authorized** and empowered **to** lay out, locate, **construct,** furnish, maintain, operate, and enjoy a **railroad** with single or double tracks, with such side tracks, turnouts, offices, and depots as thall be necessary, between the places of the termini of the said road, commencing at or within, and extending to or into any town, city, or village, named as the termini of said road, and construct branches from the main line to other towns or places within the limits of this state.

Amended 1871, p. 104. Where railroad builds through a town of 1,500 or more people a depot must be established. 18, 512 (26 N. W., 205).

493. The **capital stock** of such company shall be divided into shares of one hundred dollars each, and consist of such sum as may be named in the certificate; such shares shall be regarded as personal property, and shall be subject to sale or transfer, and to execution at law.

494. An installment of ten per cent on each share of **stock** shall be **payable** at the time of making the subscription, and the residue thereof shall be paid **in** such **installments** and at such times and places as may be required by the directors of such company.

495. If any **installment** of stock shall remain **unpaid** for sixty days after the time it may be required or specified in the call by order of the board of direct-

ors, whether the said stock is held by an assignee, transferee, or original subscriber, the same may be **collected** by action of debt, or the directors may, at their election, serve upon such stockholder, in case he shall be a resident of the state, thirty days' notice in writing, that such installment has been due and unpaid for the term aforesaid, or in case such stockholder shall be a non-resident of this state, publish in some newspaper printed at the capital of this state, and of general circulation in this state, a like notice that such installment has been due and unpaid for the term aforesaid; and if the said installment shall not be paid, with all the charges and expenses incurred in the proceedings hereby prescribed, within ninety days after the service of notice or the last publication provided for as aforesaid, the said stock, and all the right, title, and interest of the said assignee, transferee, or original subscriber therein shall, by virtue of such failure, and without further action by such company, become forfeited, and may be disposed of by said company as it sees proper.

496. Whenever any railroad company heretofore incorporated or created, or incorporated under the provisions of this subdivision, shall, in the opinion of the directors thereof, require an increased amount of **capital stock,** they shall, when authorized by the holders of a majority of capital stock, file with the secretary of state a certificate setting forth the amount of such desired **increase,** *and shall give public notice of such increase of the capital stock of such company by publishing the same for sixty days in a newspaper published in the county in which it maintains its public and principal office,* and thereafter such company shall be entitled to have such increased capital as is fixed by said certificate.

* to * added 1879, p. 79.

497. The persons named in said certificate of incorporation, or any three of them, shall be authorized to order **books** to be **opened** for receiving subscriptions to the capital stock of said company, at such time or times, and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper published or generally circulated in one or more counties where books of subscription are to be opened, of the time and place of opening books; and so soon as ten per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place as they may designate, for the purpose of choosing seven directors, who shall continue in office until the time fixed for the annual election, and until their successors are chosen and qualified. At the time and place appointed, **directors** shall be **chosen** by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxies. Each share shall entitle the owner to one vote, and a plurality of votes cast at such election shall be necessary for a choice; but after the first election for directors, no person shall vote on any share on which any installment is due and unpaid. The persons named in such certificate, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board, and be competent to fill vacancies therein, make by-laws not inconsistent with the provisions of this subdivision of the laws of this state, and alter the same at pleasure, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors chosen at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and treasurer of the corporation. The directors shall from time to time make such **dividends** of the profits of the said company as they may think proper, and the said by-laws and all alterations and revisions thereof shall be recorded and pre-

served in the office of the secretary of state, in the same manner as the certificate provided for in section seventy-three of this chapter.

Sec. 498 formed sec. 112, R. S. 1866, p. 228.

498. Every **stockholder** of any railroad company shall be **individually liable** to the creditors of such company, to an amount equal to the amount unpaid on the stock held by him for all the debts and liabilities of such company, until the whole of the capital stock held by him shall have been paid to the company; but in no other case shall the stockholders be individually liable for the debts of the corporation.

When amount due the corporation amounts to or exceeds the amount claimed by the creditor, a joint payment may be rendered against the corporation and stockholders. **4,** 560.

Secs. 499 and 500 formed secs. 88 and 87, R. S. 1866, p. 219.

499. Each and every railroad company incorporated under this subdivision, and such as shall hereafter accept the same, shall **annually** in the month of January make, upon the oath of the president, secretary, or treasurer, a full **report** of the condition of its affairs to the auditor of the state, showing the amount of the capital stock of such company, the gross amount of receipts during the previous year, the cost of repairs and incidental expenses, the net amount of profits, and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such road; and the auditor shall incorporate an abstract thereof in his annual report to the legislature.

15, 529 (19 N. W., 497).

500. Such corporations shall, upon commencing business, establish an **office** at some point on the line of its road, and may change the same at pleasure.

Secs. 501 to 505. "An act to require railroad corporations doing business in the state of Nebraska to have and maintain **public offices** in the state for the transaction of their business." 1881, p. 308. In force June 1.

501. That all railroad corporations or companies doing business in the state of Nebraska as public carriers, either for the transportation of freight or carrying passengers from any point in this state, are hereby required to have and maintain a public **general office** in this state, in some county through which said road runs, for the transaction of its business, which office shall be established on or before the first day of January, A. D. 1882, and notice thereof given by publication in some newspaper on the line of its road for four consecutive weeks; *Provided*, That railroad corporations or companies, hereafter to be incorporated under the laws of this state, shall have one year, from the date of such incorporation, in which to comply with the provisions of this act.

502. It shall be the further **duty of** all such railroad corporations or **companies** doing business as aforesaid, to **keep** and maintain in such offices **books** in which shall be recorded the amount of capital stock of such railroad corporation or company, and also the transfer of such stock, the amount of its assets and liabilities, and the names and places of residence of its officers, which said books shall be open to public inspection at all times. And the general manager, general superintendent, general freight or ticket agent or such other general officers or agents as said railroad corporations or companies shall have or employ, shall keep and maintain their offices at such general offices within this state; *Provided*, That railroad corporations or companies not operating over ten miles of road in this state shall be exempted from the provisions of this act.

503. The **directors** of every railroad corporation or company having control of any road doing business in the state of Nebraska, shall annually make a **report to the auditor** of public accounts, of the amount of money received for the preceding year from passengers and freight, at any and all points in this state, which

report shall be made and filed with the auditor on or before the fifteenth day of January of each year.

504. Any railroad corporation or company **violating** any provisions of **this act** or failing to comply with the provisions herein contained, shall **forfeit** all **right** to do business in this state, and on application of any person feeling aggrieved, it shall be the duty of any court having jurisdiction, upon proper and satisfactory proof, to place such railroad in the hands of a receiver and proceed to wind up its business.

505. In addition to the **penalties** in the proceeding section, the principal officers of such corporation or company shall be subject to fine not exceeding one thousand dollars, or imprisonment, upon conviction, in the penitentiary for a term not exceeding three years.

II. EMINENT DOMAIN.

Secs. 506 to 510 formed secs. 81–86, except 84, ch. 25, R. S. 1866, p. 217.

506. Such corporation is **authorized** to enter upon any land for the purpose of examining and surveying its railroad line, and may take, hold, and appropriate so much real estate as may be necessary for the location, construction, and convenient use of its road, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side-tracks, turn-tables, and water-stations; all materials for the construction and repair of said road and its appurtenances; and a right of way over adjacent lands, sufficient to enable such company to construct and repair its road, and a right to conduct water by aqueducts, and the right of making proper drains; *Provided,* That the lands held, taken, and appropriated, otherwise than by the consent of the owner, shall not exceed two hundred feet in width, except for wood and water stations, and depot grounds, unless where greater width is necessary for excavations, embankments, or depositing waste earth; *Provided further,* That no appropriation of private property, for the use of any corporation provided for in this subdivision, shall be made until full compensation therefor be first made or secured to the owners thereof.

One exercise of right of eminent domain does not exhaust power of railroad company. **13,** 365 (13 N. W., 624); see **24,** 745 (40 N. W., 280).

507. Whenever any railroad company heretofore incorporated, or which may hereafter be incorporated, shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to **change** the grade or location of any portion of their road, whether heretofore made or hereafter to be made, such railroad companies shall be and are hereby authorized to make such changes **of grade and location,** not departing from their general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such company shall have all the rights, powers, and privileges to enter upon and appropriate such lands, and make surveys necessary to effect such changes and grades, upon the same terms, and be subject to the same obligations, rules, and regulations as are prescribed by law; and shall also be liable in damages, when any may have been caused by such change, to the owner or owners of lands upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner or owners residing on the premises, or notice by publication in some newspaper in general circulation in the county, if non-resident.

508. If it shall be necessary, in the location of any part of any **railroad, to occupy** any road, street, alley, or **public way** or ground of any kind, or any

part thereof, it shall be competent for the municipal or other corporation, or public officer or public authorities, owning or having charge thereof, and the railroad company, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon and it shall be necessary, in the judgment of the directors of such railroad company, to use or occupy such road, street, alley, or other public way or ground, such company may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided for the appropriation of the property of individuals by the eighty-first section of this chapter [506].

Where the use of the street obstructs the lot-owner's free use of the street he may recover damages. 26, 369 (42 N.W., 93); **see 14,** 554 (16 N. W., 475).

509. Such company may acquire, by **purchase** or gift, any lands in the vicinity of said road, or through which the same may pass, so far as the same may be deemed convenient or necessary by said company to secure the **right of way** to such as may be granted to aid in the construction of such road, and the same to hold or convey in such manner as the directors may prescribe; and all deeds and conveyances made by such company shall be signed by the president under the seal of the corporation, and any existing corporation may accept the provisions of this subdivision by filing in writing their acceptance thereof, under the seal of said corporation, in the office of the secretary of state. And upon filing such acceptance, such corporation shall, from the date thereof, succeed to and become invested with all the rights, privileges, immunities, and powers conferred by this subdivision, without reorganizing. The said secretary shall record and preserve such acceptance in his office, and a copy thereof, duly certified by said secretary, under the seal of the state, shall be evidence in all the courts of this state of such acceptance.

510. Any railway company may construct and carry their railroad across, over, or under any road, railroad, canal, stream, or water course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct their **railroad crossings** as not unnecessarily to impede the travel, transportation, or navigation upon the road, railroad, canal, stream, or water course so crossed. Said corporation shall have the right to **change** the **channel of** any **stream** or water course from its present location or bed, whenever it may be necessary in the location, construction, or use of their said road, provided they do not change its general course, or materially impair its former usefulness.

This does not relieve them from any damage resulting from such act. 25, 523 (41 N. W., 350).

Secs. 511 and 512 formed secs. 95 and 97, R. S. 1866, pp. 223–4.

511. Any railroad corporation may purchase and use real estate for a price to be agreed upon with the owners thereof; or the **damages** to be paid by such corporation **for** any **real estate taken** as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the probate judge of the county wherein such real estate is situated, in conformity with the provisions of this subdivision; *Provided*, That if the company shall need or require, for the purpose of constructing said railroad, to take and occupy any real estate, in any **unorganized county,** or other unorganized country in this state, where there is no probate judge, then the probate judge of the first organized county east of said lands upon the line of said road shall appoint commissioners to assess said damages, and to perform all other duties required by the probate judges and commissioners by the terms of this subdivision, and either shall have the right to appeal, as in other cases provided for by this subdivision.

"Owner" applies to any person having an interest in the estate. 20, 282 (29 N. W., 936). **Competency of witnesses, opinions of the same, and what damages recoverable. 14,** 421 (16 N. W., 439). Experts may be allowed to testify as to the value of the land immediately before the location, and its value immediately after. **13,** 485 (14 N. W., 478). In ascertaining value of lots it was held error to admit in evidence what they cost three years before. **12,** 229 (10 N. W., 718). Measure of damages and opinion of witnesses. **11,** 585 (10 N. W., 491); **11,** 592 (10 N. W., 493). Petition to condemn must make a *prima facie* case. **23,** 613 (37 N.W., 484). When damages awarded have not been deposited with probate judge, may bring action for the amount of the award to enjoin the operation of the road against his premises, or sue for trespass. **4,** 24. Injunction will lie unless company has made deposit with probate judge as required by law, though appeal has been taken from award. **4,** 440. A paper headed "transcript," certified by county judge, though not complete, held to be sufficient to give appellate court jurisdiction. **22,** 92 (34 N. W., 69). Company liable for damages resulting from taking street. **28,** 99 (44 N. W., 79). Railroad liable for damages to a lot owner by reason of running through an alley adjoining his lot. **14,** 554 (16 N. W., 475). Damages may be recovered though no part of the land be actually taken. **16,** 169 (20 N. W., 217.)

512. If the owner of any real estate over which said railroad corporation may desire to locate their road shall refuse to grant the **right of way** through his or her premises, the county judge of the county in which said real estate may be situated, as provided in this subdivision, shall, upon the application of either party, direct the sheriff of said county to summon six disinterested freeholders of said county, to be selected by said county judge, and not interested in a like question, unless a smaller number shall be agreed upon by said parties, whose duty it shall be to carefully inspect and view said real estate, and assess the **damages** which said owner shall sustain by the appropriation of his or her land to the use of said railroad corporation, and make report in writing to the county judge of said county, who, after certifying the same under his seal of office, shall transmit the same to the county clerk of said county for record, and said county clerk shall file, record, and index the same in the same manner as is provided for the record of deeds in this state, and such record shall have the like force and effect as the record of deeds in pursuance of the statute in such case made and provided. And if said corporation shall at any time before they enter upon said real estate, for the purpose of constructing said road, pay to said county judge for the use of said owner the sum so **assessed** and returned to him as aforesaid, they shall thereby be authorized to construct and maintain their said road over and across said premises; *Provided,* That either party may have the right to **appeal** from such assessment of damages to the district court of the county in which such lands are situated, within sixty days after such assessment. And in case of such appeal, the decision and finding of the district court shall be transmitted by the clerk thereof, duly certified to the county clerk, to be filed and recorded as hereinbefore provided, in his office. But such appeal shall not delay the prosecution of the work on said railroad if such corporation shall first pay or deposit with such county judge the amount so assessed by said freeholders. Such railroad company shall in all cases pay the costs of the first assessment; *Provided,* That if, on appeal, the appellant shall not obtain a more favorable judgment and award than was given by said freeholders, then such appellant shall be adjudged to pay all the costs made on such appeal; *Provided further,* That either party may appeal from the decision of the district court to the supreme court of the state, and the money so deposited shall remain in the hands of the county judge until a final decision be had, subject to the order of the supreme court.

Amended 1883, p. 179. This method is exclusive and either party may proceed under it, but does not include damages before condemnation. **18,** 86 (24 N. W., 439). Question of damages, peculiarly of a local nature, and for jury. **24,** 708 (40 N. W., 134). Building on proposed right of way may be condemned and may be sold by company. **23,** 469 (36 N. W., 806). Damage to or loss of a house or stone quarry on the proposed right of way are proper elements of damage. Witness acquainted with land before and after may state value. **28,** 166 (44 N. W., 95). As to damages for diversion of a stream, etc. **15,** 525 (19 N. W., 497). Company cannot dispute the ownership of the land on appeal. **17,** 592 (24 N. W., 279). Railroad company cannot, on appeal, disprove the title of the person to whom damages were awarded without pleading his want of title. **14,** 270 (15 N. W., 231); **13,** 489 (14 N. W., 521); **14,** 355 (15 N. W., 728). The word "owner," as used in the statute, applies to all persons who have an interest in the estate. **14,** 271 (15 N. W., 231). No appeal being taken, mandamus lies to compel company to deposit amount of award with county judge. **27,** 698 (43 N. W., 419). Where, on appeal, the only question is the amount of damage, no pleadings are necessary, but if other issues are involved they must be pleaded to be available. **13,** 491 (14 N. W.. 521). Transcript must be filed within sixty days or good reason shown. **20,** 541 (31 N. W., 11). Party cannot be prevented from taking appeal by neglect of officers to prepare a transcript. **12,** 480 (11 N. W., 739). Company cannot abandon the taking of the land after trial of appeal and judgment in district court. **15,** 371 (18 N. W., 717). Railroad company which has appealed, but afterwards is satisfied with award, should move to affirm it (which will carry costs and interest), not to dismiss appeal. **27,** 75 (42 N. W., 905). If company appeal, and then dismiss its appeal, the award should be affirmed, which carries with it interest and costs. **23,** 621 (37 N. W., 470). Cannot be dismissed because railroad company does not answer. **17,** 460 (23 N. W., 350). Where, on appeal, verdict is less than award, costs should be divided equally. **24,** 125 (38 N. W., 35). When, on appeal, the owner recovers more damages than was allowed by commissioners, he may have interest thereon from the time he was entitled to compensation. **13,** 320 (14 N. W., 407). District court should render judgment on verdict of jury in case of appeal. **12,** 231 (10 N. W., 718). See **24,** 130 (38 N. W., 33); **6,** 160; **12,** 629 (12 N. W., 95).

Secs. 513 to 521. "An act to provide for the taking and prosecution of appeals," etc. 1887, p. 333. In force March 31.

513. That either party shall have the **right to appeal** to the district court of the county where the lands are situated from the assessment of damages allowed and mentioned in section ninety-seven (97) of chapter sixteen (16) of the Compiled Statutes (1885) of Nebraska [512], at the time and in the manner hereinafter specified and set forth.

514. That the party appealing shall within sixty days after such assessment enter into an **undertaking** to the adverse party, with at least one good and sufficient surety, to be approved by the county judge of such county; conditioned, first, that the appellant shall prosecute such appeal to effect without unnecessary delay; and second, that if judgment be adjudged against the appellant on the appeal, the appellant shall satisfy whatever judgment may be adjudged against such appellant.

515. That the party appealing may file such **undertaking** in the office of the clerk of the appellate court within the time aforesaid, which undertaking **filed** shall be **approved** by such clerk; upon the filing and approval of which undertaking the clerk shall issue a **summons** to the appellee to appear at the term of the court to which the appeal is returnable, which summons shall be served and returned in the time and manner as in cases commenced in the district court.

516. That when the appeal is taken by filing the appeal undertaking with the clerk of the appellate court, and a summons and *alias* summons shall have been duly issued against the **appellee** and returned "**not found,**" it shall be lawful for the appellate **court** to **proceed** and try the appeal the same as if the appellee had been duly served with the process.

517. That said **county judge** shall, on demand of the appellant, make out a certified **transcript** of all the proceedings of such assessment, including the undertaking, and such of all papers and files as relate to or are connected with the assessment or assessments appealed from, and shall, on demand, deliver the same to the appellant, or his, her, or its agent, who shall deliver the same to the clerk of the appellate court, to which such appeal may be taken, on or before the first day of the next term of such appellate court.

518. That if such appeal shall be taken within less than twenty days next preceding said first day of said next term of appellate court, this said **transcript** shall be **filed** with said clerk on or before the first day of the next succeeding term of said appellate court.

519. That said **clerk,** on receiving such transcript and other papers as aforesaid, shall file the same and **docket** the **appeal;** the owner of the land shall be the

plaintiff in the appellate court, and the railroad company the defendant, and the **parties** shall proceed in all subjects in the same manner as though the action had been originally instituted in such appellate court.

No new pleadings are necessary. **28,** 97 (44 N. W., 79). Judgment should be entered on the verdict and execution awarded without regard to the money deposited. **15,** 367 (18 N. W., 717).

520. That assessments made for the same right of way for the same railroad company, upon different tracts of lands belonging to the same owner or owners in the same right, may be joined in one appeal and proceeded with in the appellate court as **separate counts joined** in one action for damage to such tracts of land, for or on account of such right of way.

521. That this **act** shall **not apply to** any such assessments heretofore made.

Secs. 522 to 526 formed secs. 98, 99, 96, 100, 105 respectively, R. S. 1866, pp. 223 to 226.

522. **Freeholders** so appointed shall be the commissioners to **assess all damages** to the owners of real estate in said county; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county to grant the right of way as aforesaid, by giving the said owner or guardian ten days' notice thereof in writing, either by personal service or by leaving a copy thereof at his usual place of residence, have the damages assessed in the manner hereinbefore prescribed.

523. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners as aforesaid, the **sheriff** shall, upon the selection of said probate judge, summon other freeholders to **complete** the **panel,** and said commissioners shall proceed as directed in the preceding section. Said commissioners shall receive two dollars per day, each, for their services, and the same shall be taxed in the bill of **costs.**

See **18,** 88 (24 N. W., 439).

524. Whenever any railroad corporation shall take any **real estate** as aforesaid, **of** any **minor, insane person,** or any married woman whose husband is under guardianship, the guardian of such minor or insane person, or such married woman with the guardian of such husband, may agree and settle with said corporation for all damages or claims by reason of the taking of such real estate, and may give valid releases and discharges therefor.

525. If, upon the location of said railroad, it shall be found to run through the **lands of** any **non-resident** owner, the said corporation may give four weeks' **notice** to such proprietor, if known, and if not known, by a description of such real estate, by publication four consecutive weeks in some newspaper published in the county where such lands may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through his or her lands; and if such owner shall not within thirty days thereafter apply to said probate judge to have the **damages assessed** in the mode prescribed in the preceding sections, said company may proceed, as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners; and upon the payment of the damages assessed to the probate judge of the proper county for such owner, the corporation shall acquire all rights and privileges mentioned in this subdivision.

Appraisement nine months after the time set confers no jurisdiction. Publication of notice must be four consecutive weeks. **21,** 383 (32 N. W., 162); see **18,** 88 (24 N. W., 439).

526. Any railroad corporation shall be authorized to pass over, **occupy,** and enjoy any of the school, university, saline, or other **lands of this state**; *Provided,* That no more than one hundred feet in width from the center of the roadway

survey of such corporation, on either side, shall be taken for roadway, and not to exceed twenty acres, to conform to the subdivisions of the government survey, in any one tract for each section of twelve consecutive miles of such railroad, shall be taken for station, depot grounds, machine shops, turnouts, side-tracks, warehouses, and other appurtenances to a railroad; and that any railroad corporation that has surveyed or shall hereafter survey or locate a line of its road, immediately upon platting such survey of its line, and of the selection for depot grounds under this act, and filing such plat duly certified by the chief engineer or president of such corporation, of the fact of such survey and selection for depot grounds, duly acknowledged, with the secretary of state, and with the county clerk of the county in which said land is situated, to operate as a vested right in such corporation for two years from the date of filing the same, shall be authorized to enter upon said lands so surveyed and selected, and construct thereon all necessary railroad depot buildings, machine shops, turnouts, side-tracks, turntables, roundhouses, and other appurtenances deemed necessary for railroad purposes by such corporation, and so soon as such railroad shall be constructed over such lands so selected, and a station erected thereon, on proof of such fact to the satisfaction of the governor, and upon paying the full value for said lands for depot station and workshop grounds, and all grounds herein contemplated, except the one hundred feet of trackway, the governor shall convey in fee simple by letters patent under the great seal of the state, attested by the secretary of state, to the corporation constructing such railroad, the lands and right of way included in the plat and certificate so filed with the secretary of state as aforesaid, and no subsequent grant from the state to any other person or corporation of any tract of land including such right of way and selection for depot grounds so platted, and the plat thereof filed as aforesaid, though not excepted in such grant, shall divest said railroad corporations of their rights in the same under this act; *Provided further*, That the damages accruing to any occupant or owner, or other person who may reside or have improvements on said land previous to the filing of such plat, shall be determined and paid by said railroad company as heretofore provided in this subdivision.

Rewritten 1869, p. 84.

Secs. 527 to 529. "An act to provide for the valuation and **sale** of **state lands** on which any railway company may have located its road, stations, or works." 1887, p. 534. In force July 1.

527. Any **railway** company incorporated under the laws of this state, which shall have constructed its railway, or located, or hereafter may construct or locate its grounds for stations, machine shops, depot grounds, turnouts, side tracks, warehouses, and other appurtenances to a railroad, incident to its organization, across or **on** any **state lands**, as provided by section 105, of chapter 16 of the Compiled Statutes of Nebraska of 1885 [526], may apply in writing to the board of public lands and buildings, for valuation and conveyance thereof, filing with such application a plat and description of such lands.

Right to condemn real estate for right of way is restricted to corporations organized under the laws of this state. 22, 642 (36 N. W., 121).

528. [**Appraisement.**]—On such application being made, the commissioner of public lands and buildings shall cause a copy of such application and plat to be forwarded to the chairman of the board of county commissioners, or supervisors of the county where such lands lie, and it shall be the duty of such county commissioners, or a majority of them, or if the county is under township organization, three of the supervisors to be designated by the said board of supervisors or a majority of such designated supervisors, to view the lands so desired to be purchased by such company, and return a true and correct value of such land, under

oath, the material facts in which return shall be communicated to such board of county commissioners or supervisors, and entered of record in their proceedings.

529. After the foregoing proceedings have been had, the **applicant** to purchase shall, within ninety (90) days after such appraisement, pay to the state treasurer the appraised value of such land, and shall then be entitled to receive the **deed** for the same upon forwarding the proper evidence of such appraisal and receipt of the state treasurer to the commissioner of public lands and buildings; *Provided further*, That the **damage** accruing to any occupant or owner, or other person, who may reside or have improvements on said land previous to the filing of such plat, or the appraisement of such damages, shall be paid by said railroad company, such damages to be determined either by mutual agreement between the party so owning or occupying said lands, and such railway company, or by appraisement as in other cases.

Secs. 530 to 535. "An act to provide the manner in which the **title** may be **acquired** by railroad companies incorporated under the laws of this state for right of way and other necessary purposes across the **educational** and other **lands** of this state." 1887, p. 525. In force March 31.

530. That all **railroad** companies organized under the laws of this state which may have heretofore taken or may hereafter take any of the educational, saline, university, agricultural college, or other lands belonging to the state for right of way, stations, turnout, side tracks, or other necessary appurtenances to a railroad shall be **entitled to** a **deed** in fee simple for the land so taken, upon paying into the county treasury of the county where the land is situated the full value of the lands so taken, together with the amount for damages that the state shall sustain, together with the damages to lessee.

531. For the purpose of ascertaining the **value** of the lands so taken, or to be taken, the county commissioners of the county, or in case the county is acting under township organization, then three supervisors, to be appointed by their chairman, shall constitute a **board of appraisers**, and shall each be entitled to receive the sum of three (3) dollars per day for each day actually employed and ten cents per mile for each mile necessarily traveled, to be paid by the railroad company.

532. On application in writing to said **board** of appraisers by any railroad company desiring the appraisal of any of the lands mentioned in section one, it shall be the duty of said board to carefully inspect and view said land and **appraise** the value per acre of the lands at the time the same were taken, together with any damages the state may sustain by reason thereof.

533. The board shall make a **report** in writing to the county treasurer, of the **value** of the lands so taken, together with the amount of **damages**, if any, the state may sustain, and on payment of said amounts by the railway company into the county treasury, the county treasurer shall give the same receipt as he is required to give when payment is made of part principal on a contract of purchase, and the county clerk shall transmit a duplicate to the commissioner of public lands and buildings, to be by him entered of record as in other cases of payment on educational lands.

534. The railway **company** shall **file** a **plat** of the land so taken with the commissioner of public lands and buildings, who shall prepare a **deed** to be executed by the governor, conveying said lands to said company, and the amount of lands so taken shall be marked sold, by the said commissioner, from the section or part of section from which it has been sold.

535. Where any of the **lands** desired to be so taken are held **under contract** of sale or lease, the amount of lands so taken shall be deducted from the total amount mentioned in said contract, and the amount of cash so paid in on contracts of pur-

chase shall be credited on the contract, first to the payment of the number of acres according to the contract price, and the residue as a payment on the balance of the land; *Provided, however*, That all damages that may be assessed by reason of injury done to any improvements on said land, or possession thereof, shall be paid to the person holding the contract of purchase or lease; *Provided further*, That not more than one hundred (100) feet will be taken for right of way, and not more than twenty (20) acres for all other purposes, on any one tract of six hundred and forty (640) acres; *Provided further*, That the lands so taken shall not be sold for less than seven (7) dollars per acre, nor less than the price per acre specified in the contract of purchase.

III. CONSOLIDATION—LEASING—PURCHASE, ETC.

Secs. 536 to 541 formed secs. 89 to 94, ch. 25, R. S. 1866, p. 222.

536. Whenever the lines of railroad of any railroad companies in this state, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break of gauge or interruption, such **companies** are hereby authorized to **consolidate** themselves into a single corporation, in the manner following: The directors of the said two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the number of directors thereof, which shall not be less than seven; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations; and such new corporations shall possess all the powers, rights, and franchises conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this subdivision; *Provided*, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation shall be paid the market value of said stock at the date of such consolidation.

Consolidation authorized only when, by it, two roads will form a continuous line. 24, 158-9 (38 N. W., 43.)

537. Such **agreement** of the directors shall not be deemed to be the agreement of the said two or more corporations until after it has been submitted to the stockholders of each of the said corporations separately, at a meeting thereof, to be called upon a notice of at least ninety days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when the place of residence is known, and deposit in the postoffice, and published at least for six successive weeks in one newspaper in one of the cities or towns in which each of said corporations has its principal office of business, and has been **sanctioned by such stockholders**, by the vote of at least two-thirds of the amount of the stock represented at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. And when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

538. Upon making the agreement mentioned in the preceding section in the manner required therein, and filing a duplicate in counterpart thereof, in the office of the secretary of state, the said two or more **corporations** (mentioned or referred to in the last two preceding sections, or any other law of this state) shall be **merged in the new** corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.

539. Upon the election of the first board of directors of the corporation created by the agreement in the preceding section mentioned, and by the provisions of this subdivision, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular the **rights** and interest in and to every species of property, real, personal, and mixed, and things in action, shall be deemed to be **transferred to** and vested in such **new corporation,** without any other deed or transfer. And such new corporation shall hold and enjoy the same, together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties to such agreement, should have continued to retain the title and transact the business of such corporations. And the titles and the real estate acquired by either of the said two or more corporations shall not be deemed to revert or be impaired by means of anything in this subdivision contained; *Provided,* That all rights of creditors, and all liens upon the property of either of said corporations, shall be and hereby are preserved unimpaired; and the respective corporations shall continue to exist, as far as may be necessary to enforce the same; *Provided further,* That all debts, liabilities, and duties of either company shall henceforth attach to such new corporation and be enforced to the same extent and in the same manner as if such debts, liabilities, and duties had been originally incurred by it.

540. When any two or more railroad companies shall become **consolidated,** as contemplated by the provisions of this subdivision, such **companies** so consolidated shall keep each and every railroad line that may come into its possession by such consolidation in good running order, with sufficient rolling stock to transfer the freight and passengers. They shall not discriminate against the business of either, or any of such railroad lines, either directly or indirectly, by the detention of freight or passengers, or by charging more for freight or passengers than is charged in proportion upon any other railroad line under the control of said company so consolidated *and whenever any railroad company, persons, or person, their grantors, assignors, lessors, or mortgagors shall have received any lands, bonds, moneys, or other valuable thing, to aid in the construction of any railroad in this state, such railroad company, persons, or person, their grantees, assignees, lessees, or mortgagees, shall keep all such roads in good running order, and shall run all trains over the same, and shall cause the same to be listed for taxation as provided in section 17 of chapter sixty-six, entitled "Revenue" [ch. 46, Public Finances], and for each and every violation of any condition, requirement, or non-compliance with this act, the corporation, persons or person so violating, or non-complying, shall be fined in any sum not more than five hundred dollars, to be paid to the persons or person so injured, and to be collected by the proper civil action, and shall, in the discretion of the court, forfeit its charter and franchises, and the property of such corporations, companies, persons, or person so violating, or non-complying, shall be subject to execution without stay thereof, where the same has not been forfeited.

After * added 1875, p. 69.

541. Any railroad company heretofore or hereafter incorporated **may,** at any time, by means of subscription to the capital stock of any other company or other-

wise, **aid** such company in the construction of its railroad for the purpose of forming a connection of said last mentioned road with the road owned by the company furnishing such aid; or any railroad company existing in pursuance of law may **lease or purchase** any part of or all of any railroad constructed or to be constructed by any **other company,** if said company's lines of railroad constructed or to be constructed are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said companies respectively; or any two or more railroad companies, whose lines are so connected, may enter into an agreement for their common benefit, consistent with and calculated to promote the objects for which they are created; *Provided,* That no such aid shall be furnished, nor any purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of said companies shall have been called by the directors thereof, at such time and place and in manner as they shall designate, and the holders of at least two-thirds of the stock of such company, represented at such meeting either in person or by proxy and voting thereat, shall have assented thereto.

Amended 1889, p. 575. Unauthorized leasing, subjects franchise to forfeiture. **24,** 144 (38 N. W., 43). Lease and purchase authorized only when thereby two roads will form a continuous line. **24,** 164 (38 N. W., 43). One road may lease the whole or part of another. **14,** 391 (15 N. W., 695).

Secs. 542 and 543. "An act authorizing the **purchase** and **sale** of railroads in certain cases." 1881, p. 303. In force June 1.

542. Every railroad **company** organized under the laws of this state whose railroad or railroads constructed or to be constructed within this state shall be so situated with reference to any railroad constructed or to be constructed through any adjoining state or territory by any railroad company organized or existing under the laws of the United States, or any state or territory, that the same may be so connected at the boundary line of this state or at any point within this state by bridge, ferry, or otherwise, as to practically form a continuous line of railway over which cars may pass, is hereby authorized to **purchase** such **connecting railway,** or to sell the same to the railroad company constructing, owning, or operating the said railroad through said adjoining state or territory as aforesaid, to said point of connection. And any such foreign railroad company purchasing under the provisions hereof any such connecting railroad within this state may manage the same by its board of directors and officers, and may operate the same, and may issue thereon its stock and bonds to the same extent and in the same manner as authorized by the laws of this state, and the said company shall file for record in the office of the secretary of state of this state a true copy of its articles of incorporation, and the said company shall thereafter possess, exercise, and enjoy within this state as to the control, management, and operation of the said road, and as to the location, construction, and operation of any extension of its said railroad or any connecting railroad or feeders within this state, all the rights, powers, privileges, and immunities, including the powers of eminent domain, possessed by other railroad corporations of this state, and shall be liable to all the restrictions imposed by the general laws of this state upon the railroad corporations of this state. The purchase of any such railroad shall be subject to any and all laws, incumbrance, or indebtedness existing against the railroad company from which such road may be purchased; *Provided, however,* That nothing herein contained shall be construed as authorizing the purchase by any railroad company under the provisions of this act of any parallel and competing line of railroad within this state.

543. Said corporation shall be **subject to** the **laws** of this state as to that portion of the road purchased, built, and operated in this state the same as if organized under the laws of this state.

See **16,** 254 (20 N. W., 198.)

Secs. 544 and 545. "An act relating to the **purchase**, lease, sale, and **aiding** of railroads in certain cases and for the ratification of prior leases, sales, and consolidations." 1887, p. 536. In force March 14.

544. **Any railroad** company organized under the laws of this state **may buy** or **lease** the whole or any part of the railroad and branches, constructed or to be constructed, together with all the property, rights, privileges and franchises thereto pertaining, of any railroad company organized under the laws of any other state or territory, and may aid such company in the construction of its road by the purchase of its stock and bonds, or by guaranteeing its bonds, or otherwise; and any railroad company of this state may sell or lease the whole or any part of its railroad and branches, constructed and to be constructed, together with all property, rights, privileges, and franchises thereto pertaining, to any railroad company organized or existing under the laws of any other state or territory, and any such foreign company may aid any railroad company in this state in the construction of its road and branches, by purchase of its stock and bonds, or by guaranteeing its bonds, or otherwise, whenever the roads of the respective companies (parties to such agreement to aid, or to such purchase, sale, or lease), constructed or to be constructed, shall, or will when constructed, so connect by bridge, ferry, railroad, or otherwise, as to practically form, in the operation thereof, a continuous line or lines of railroad over which cars may pass. The railroad company of another state or territory which shall so purchase or lease a railroad or railroads, in this state, shall possess, and may exercise and enjoy within this state, as to the control, management, and operation of the said road, and as to the location, construction, and operation of any extension or branches thereof, all the rights, powers, privileges, and franchises possessed by railroad corporations of this state. Such purchase, sale, or lease may be made, or such aid furnished, upon such **terms** and conditions as shall be agreed upon by the directors of the respective companies, but the same shall be approved or ratified by persons holding or representing two-thirds in amount of the capital stock of each of such companies respectively, at an annual stockholders' meeting, or at a special meeting of the stockholders called for that purpose, or by the approval in writing of two-thirds in interest of the stockholders of each company respectively; *Provided*, That nothing in the foregoing provisions shall be held or construed as curtailing the right of this state, or of the counties in this state, through which any such road or roads may be located, to levy and collect taxes upon the same, and the rolling stock thereof, *pro rata*, in conformity with the provisions of the laws of this state upon that subject, and the road or roads in this state so purchased, leased, or aided, shall be subject to taxation and to regulation and control by the laws of this state in all respects the same as if such purchase, sale, or lease had not taken place; *Provided further*, *however*, That before any railroad corporation of any other state or territory shall be permitted to avail itself of the benefits of this act, such corporation shall file with the secretary of this state a true copy of its charter or articles of incorporation, together with a certified copy of a resolution of its board of directors or stockholders, duly adopted, authorizing service of process to be made upon its officers or agents in this state engaged in transacting its business, in the same manner as may be provided by law for the service of process upon railroad corporations of this state.

545. Any **sale,** by consolidation or otherwise, or any **lease,** or any agreement to sell or lease the whole, or any part of a railroad or its branches in this state, with the franchises appertaining thereto, to any railroad company organized and existing under the laws of this or any other state or states, or any consolidation between such company of another state, and a corporation of this state, **heretofore executed,** by the proper officers of the companies, parties to such sale or lease, con-

solidation, or contract, may be ratified and made in all respects valid and binding by the assent of the owners of two-thirds of the stock in each of such companies, to be expressed in the manner provided in section 1 of this act [545]. Upon such ratification by stockholders such lease or sale, or consolidation or agreement to sell or lease, heretofore executed, shall become in all respects valid and binding from the date of its execution.

Secs. 546 to 548 formed secs. 114 to 116, ch. 25, R. S. 1866, p. 229.

546. Every railroad company organized under the laws of this state shall have power to intersect, join, and unite its railroad or railroads with any railroad or railroads constructed or to be constructed in this state, or in any adjoining state or territory, by any railroad company organized under the laws of any state or territory, at such point on the boundary line of this state and such adjoining state or territory, or at such other point as may be mutually agreed upon between said companies; and all such railroad companies whose **railroads** are or may be **connected** at the boundary line of this state or at such other agreed point by bridge, transfer, ferry, or otherwise as to form practically a continuous line of railway over which cars may pass, are authorized to consolidate the stock of the respective companies, making one joint stock company thereof, and bringing the railroads thus connected under one management upon such terms as may be mutually agreed; *Provided,* No railroad company shall consolidate its stock, property, franchises, or earnings in whole or in part with any other railroad corporation owning or operating a parallel or competing line in this state. Articles stating the terms of such **consolidation** shall be approved by each company by a vote of the stockholders owning a majority of the stock in person or by proxy at either a regular annual meeting thereof, or at a special meeting called for that purpose by a notice of at least sixty days, stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the postoffice and published for at least three successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of such majority annexed to such articles and copies of said articles and of the records of such approval or of such consent, and accompanied by lists of the stockholders of such corporation, and the number of shares held by each, duly certified by the respective presidents and secretaries with the respective corporate seals affixed, shall be filed for record in the office of the secretary of state of this state before any such consolidation shall have any validity or effect. Upon filing for record in the office of the secretary of state of the copies of said articles of such consolidation, and of such record of approval or consent, the companies so consolidating shall become one corporation, and the said consolidating corporations shall become merged in the new corporation provided for in said articles, and shall be known thereafter by the corporate name therein adopted, and shall within this state possess all the powers, franchises, and immunities, including the right of further consolidation with other corporations under this section, and be subject to the same liabilities and restrictions imposed by the laws of this state upon other railroad companies, and shall in addition possess such powers, franchises, and immunities, and be liable to such special restrictions and liabilities, as the said consolidated corporations were within this state possessed of or subject to under any laws of this state peculiarly applicable to them or either of them at the time of such consolidation.

Rewritten 1881, p. 305. Is not in conflict with constitution; railroad incorporated in this state may consolidate with or not. 25, 161 (41 N. W., 125).

547. Every **railroad** company heretofore organized, or which may be hereafter organized under this subdivision, or which may accept the same as is herein-

before provided, is hereby empowered to extend their road into or through any other state or territory, under such regulations as may be prescribed by the laws of such state or territory through which said road may be extended; and the rights and privileges over said extension, in the construction and use of said railroad for the benefit of said company, and controlling and applying the assets of said company, shall be the same as if their railroads had been constructed wholly within this state.

548. Every railroad company heretofore organized, or which may hereafter be organized under this subdivision, or which may accept the same as is hereinbefore provided, and which may have constructed or commenced the construction of their road so as to meet and connect with any other railroad in an adjoining state or territory, at the boundary line of this state, shall have the power to made such contracts and agreements with any such roads constructed in an adjoining state or territory for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper.

FOREIGN COMPANIES.

Sec. 549. "An act to legalize the incorporation of certain railroad companies of the state of Nebraska." 1873. In force February 14. G. S., p. 206.

549. That any railroad company which has been organized under the laws of the states of Iowa, Kansas, or Missouri, and which has heretofore extended its line of railroad in this state, or built any portion of its line of road in this state, and has filed a true copy of its original articles of incorporation in the office of the secretary of state of this state, is, from the time of filing said copy of its original articles of incorporation as aforesaid, hereby declared to be a legal corporation of this state, and entitled to all the rights, privileges, and franchises of railroad companies organized under and pursuant to the laws of the state of Nebraska.

Sec. 550. "An act to amend an act entitled 'An act to authorize non-resident railroad companies to build roads in Nebraska.'" Approved February 12, 1869. 1879, p. 106. In force June 1.

550. That any railroad company heretofore organized under the laws of the states of Kansas, Missouri, Iowa, Minnesota, or territory of Dakota, or any company so organized under the laws of another state whose road may extend across any one or part of any one of these states or said territory, is hereby authorized to extend and build its road into the state of Nebraska. And such railroad company shall have and possess all the powers, franchises and privileges, and be subject to the same liabilities of railroad companies organized and incorporated under the laws of this state; *Provided*, Such non-resident company shall first file a true copy of its articles of incorporation with the secretary of this state, and shall comply with the laws of the state of Nebraska, as to filing and recording articles of incorporation, and in all things required by law relating to railroads, and otherwise in this state, and such non-resident railroad company shall keep an office in this state in some county in which its road is, or is proposed to be, and shall be liable to civil process, to be sued and to sue, as provided by law.

Secs. 551 to 554. "An act to authorize railroad companies of adjoining states to mortgage or convey their property situated in the state of Nebraska." 1871, p. 72. In force February 10.

551. That it shall be competent and lawful for any railroad company heretofore incorporated or organized, or which may be hereafter incorporated or organized under the laws of an adjoining state, and which shall have extended its railroad into this state or have become a corporation of this state under the laws thereof, to mortgage, lease, or sell that part of its railroad, and the property, rights, privi-

leges, and franchises connected therewith, situated in this state, to any railroad in this state, and the railroad company making such purchase shall thereupon become vested with all the property, rights, privileges, and franchises of the company making such sale, and pertaining to the said railroad so sold, and shall be authorized to locate, construct, and complete, maintain and operate the railroad thus purchased, and may receive, hold, and convey all municipal aid, endowments, and property of any kind whatsoever, upon complying with the terms and conditions upon which the same were to be had, as fully and to the same extent as the railroad company making such sale could have done had no such sale been made.

552. **Any railroad** company heretofore incorporated or organized, or which may be hereafter incorporated or organized under the laws of an adjoining state, and which shall have extended its railroad into this state, or under the laws of this state, shall have become incorporated and authorized to construct and maintain a railroad within this state, may **mortgage** or lease, sell **or convey** the whole or any part of its railroad, situated within the state, and the rights, privileges, and franchises connected therewith, and other property pertaining thereto, to any person or persons on such terms and conditions as may be agreed upon, and the person or persons making such purchase, and their associates, may become a body corporate under the laws of this state, in the manner prescribed for the creation and organization of railroad companies in this state; and on the organization of such corporation, it may take, receive, and hold the railroad and property so purchased by said corporators, and shall have, possess, and enjoy the same, and all the rights, privileges, and franchises connected therewith, and held and possessed by the company making such sale, and shall also have all the rights, privileges, and franchises of railroad companies organized under the laws of this state, with full power and authority to construct, complete, maintain, and operate the railroad thus purchased, receive, hold, and dispose of all endowments, grants of land, municipal or individual aid granted to said company making such sale, or to which said company was or might have become entitled, upon compliance with the terms and conditions upon which such endowments, grants, donations, or aid were to be had; and the railroad company so organized may, under the laws of this state, consolidate its stock and property with any other railroad company upon such terms and conditions as may be agreed upon; *Provided, however*, That no **sale**, or purchase, shall be made of railroads situated within this state, of companies without this state, or consolidations effected as provided in this act, until the terms of such sale or consolidations shall have been **approved** by a majority of the stockholders in interest, in person or by proxy, at the annual or special meeting, of which due notice shall be given by publication, or in writing to all the stockholders in interest, or the same be approved by the written consent of a majority of the stockholders in interest, filed in the office of said respective companies.

553. That all **contracts** and agreements made by any railroad company prior to such transfer, lease, consolidation, or mortgage shall be **binding** on the assignees, lessees, or mortgagees of such company, and that the rights of any stockholders, or parties entitled to stock therein, shall in no way be impaired by such transfer, lease, consolidation, or mortgage.

554. When any **company** or persons shall have purchased any railroad, or two or more railroads are consolidated, as contemplated by the provisions of this act, such companies or persons so purchasing shall **keep** each and every railroad **line** that may come in their possession by such purchases **in good** running **order,** with sufficient rolling stock, to transport the freight and passengers. They shall not discriminate against the business with either or any of said railroad lines, either

directly or indirectly, by the detentions of freights or passengers, or charging more for freight or passage than is charged in proportion upon any other railroad line under the control of said company or persons.

IV. OPERATION.

DUTIES AND LIABILITIES.

Secs. 555 and 556 formed secs. 1 and 2 of an act to define the duties and liabilities of railroad companies. 1867, p. 68. In force June 22.

555. That every railroad corporation whose lines of road or any part thereof is open for use shall, within six months after the passage of this act, and every railroad company formed or to be formed, but whose lines are not now open for use, shall, within six months after the lines of such railroad or any part thereof are open, erect and thereafter maintain **fences** on the sides of their said railroad, or the part thereof so open for use, suitably and amply sufficient to prevent cattle, horses, sheep, and hogs from getting on the said railroad, except at the crossings of public roads and highways, and within the limits of towns, cities, and villages, with opens, or gates, or bars at all the farm crossings of such railroads, for the use of the proprietors of the lands adjoining such railroad, and shall also construct, where the same has not already been done, and hereafter maintain at all road crossings, now existing or hereafter established, cattle guards suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting onto such railroad; and so long as such fences and cattle guards shall be made after the time hereinbefore prescribed for making the same shall have elapsed, and when such fences and guards, or any part thereof, is not in sufficiently good repair to accomplish the objects for which the same is herein prescribed, is intended, such railroad corporation and its agents shall be liable for any and all damages which shall be done by the agents, engines, or trains of any such corporation, or by the locomotives, engines, or trains of any other corporations permitted and running over or upon their said railroad, to any cattle, horses, sheep, or hogs thereon; and when such fences and guards have been fully and duly made, and shall be kept in good and sufficient repair, such railroad corporation shall not be liable for any such damages, unless negligently or willfully done; **Provided, however,* That any person, company, or corporation owning land adjoining the right of way of any railroad company in this state, and not within the limits of any town, village, or city, and intending to enclose his or their land, or any part thereof, that adjoins such right of way or railroad, with a fence, such person, or the secretary of such company or corporation, by direction thereof, may notify in writing such railroad company of such intention, and request such railroad company to build a lawful fence as described in this section on the line between their railroad and the land intended to be enclosed. Such notice shall definitely specify two points on such line between which points such fence is requested to be erected, and describe the field intended to be enclosed. The railroad company shall, within six months after receiving such notice, cause to be erected the fence required by such notice, and in case of a failure so to do, the party so giving notice as aforesaid may cause such fence to be erected at a reasonable cost, and collect the amount thereof from the railroad company so neglecting to erect the fence.

All after * added 1883, p. 262. The right to build and operate a railroad is granted by the state on the condition that all people be treated alike. **17,** 647 (24 N. W., 329). Required to fence track. **11,** 596 (10 N. W., 493). There is no statute requiring a railroad to fence its road within the limits of a city or village. **14,** 233 (15 N. W., 220). Barbed wire fence, over which horses stepped and were killed, not sufficient. **24,** 91–2 (38 N. W., 27). Live fence not sufficient. **26,** 192 (41 N. W., 992). Where track is not fenced the negligence of the owner of stock in allowing them to run at large is no defense. **15,** 366 (18 N. W., 511); **17,** 693 (24 N. W., 388). Where company fail to fence and stock is killed they are absolutely liable whether owner negligent or not.

18, 219 (24 N. W., 706). But this liability is for damages by actual collision only. **18,** 369 (25 N. W., 365); **18,** 644 (26 N. W., 464). A railroad company is entitled to the exclusive use of its grounds except at lawful crossings of public and private ways. When party falls into an excavation which road had a right to make, the road is not liable for damages. **14,** 298 (15 N. W., 696). Owner was allowed to recover for hogs killed on track which ought to have been fenced, when there was no negligence on part of either himself or the railroad company. **14,** 15 (14 N. W., 547). Where cattle escaped on to the track by reason of the failure of the company to keep its fence in repair, and were killed, the owner can recover. **13,** 484 (14 N. W., 376). Railroad company was held liable for stock killed upon its track in the night time at a point where it was required to fence but failed to do so, notwithstanding stock was prohibited from running at large in the night time. **14,** 72 (15 N. W., 197); **28,** 117 (44 N. W., 93); **28,** 119 (44 N. W., 103); **24,** 160 (38 N. W., 43).

556. Any **railroad** company hereafter running or operating its road in this state, and failing to fence on both sides thereof, against all live stock running at large at all points, shall be absolutely **liable** to the owner of any live **stock** injured, **killed,** or destroyed by their agents, employees, or engineers, or by the agents, employees, or engines belonging to any other railroad company, running over and upon such road, or there being; *Provided,* That in case the railroad company liable under the provisions of this section shall neglect or refuse to pay the value of any property so injured or destroyed, after thirty days' notice in writing given, accompanied by an affidavit of the injury or destruction of said preperty, to any officer of the company, or any station agent, or ticket agent, employed in the management of its business, in the county where the injury complained of shall have been committed, such railroad company, their agents, and employees, shall, in an action brought to recover damages therefor, be held and they are hereby declared to be liable to pay double the value of the property so injured, killed, or destroyed as aforesaid; **Provided further,* That if the railroad company do not object to the value of the property so injured or destroyed, as set forth in the notice aforesaid, within ten days, it shall be considered and taken as the true value, but it the said company are dissatisfied with the value as set forth is [in] said notice, they shall, within ten days, leave a written notice to that effect at the residence or place of business of the owner of the stock so injured or destroyed, and the value shall then be ascertained and determined in accordance with the provisions of section 5 of the general herd law.

Amended and all after * added 1877, p. 59.

Sec. 557 formed sec. 106, and secs. 558 to 561 formed secs. 101 to 104, R. S. 1866, p. 226.

557. When any person owns **land on both sides** of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one **causeway** or other adequate means of crossing the same.

See **11,** 596 (10 N. W., 493).

558. Any railroad corporation may **raise** or **lower** any turnpike, plank **road,** or other way, for the purpose of having their railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road, or other way, as soon as may be, in good repair.

559. Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed, shall provide and **keep in good order** suitable temporary ways to enable travelers to avoid or pass such obstructions.

560. Every railroad corporation shall **maintain** and keep in good repair all **bridges,** with their abutments, which such corporation shall construct for the purpose of enabling their road to pass over or under any turnpike, road, canal, watercourse, or other way.

561. A **bell** of at least thirty pounds weight or a steam **whistle** shall be placed on each locomotive engine, and shall be rung or whistled at the distance of

at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a **penalty** of fifty dollars **for** every **neglect,** to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this state, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

See **22,** 479 (35 N. W., 235).

Sec 562 formed sec. 113, R. S. 1866, p. 228.

562. Every railroad company shall have power to **cross,** intersect, join, **and unite** its railroad **with** any **other railroad** before constructed, at any point on its route and upon the grounds of such other railroad company, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connection. And every company whose railroad is or shall hereafter be intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners, to be selected as provided in this subdivision.

Secs. 563 to 565. "An act to require all trains run upon railroads in this state to come to a full stop before crossing any other road, and to provide penalties for its violation." 1889, p. 406. In force July 1.

563. All railroad trains and locomotives without trains shall come to a **full stop at** least two hundred feet and not more than eight hundred feet from the **crossing** of the other railroads, and the engineer shall sound two long blasts of the whistle before starting forward, except where said railroads maintain a semaphore and gate with torpedo attachment, and when the signals indicate the crossings to be clear no stop need be made.

564. **When trains** or locomotives without trains **approach** a **crossing simultaneously,** the one on the older road shall have the right to cross first, and the last train to cross shall not start until the first train has cleared the crossing and signal indicates that track is clear.

565. Every engineer **violating** the **provisions** of the preceding section shall for each offense forfeit one hundred dollars, to be recovered in the name of the state of Nebraska for the benefit of the school fund; and the person, persons, or corporations on which road such offense is committed shall forfeit for each offense so committed the sum of two hundred dollars, to be recovered in like manner.

Secs. 566 to 571. "An act **requiring** all railroads, corporations, companies, and persons operating a railroad and doing business in Nebraska to equip all engines and cars with proper, efficient, and safe **automatic couplers and brakes,** and for prescribing penalties for failure thereof." 1891, p. 222. In force August 1.

566. That it shall be unlawful for any corporation, company, or person **operating** any line of railroad in this state, any car manufacturers, or transportation **company** using or leasing **cars,** to put in use in this state any **new** cars or any cars that have been sent into the shop or shops for general repairs, **or** whose draft rigging has to be **repaired** with a new draw-bar or bars, that are not equipped with safety or automatic couplers or draw-bars such as shall not necessitate the going between the ends of the cars to couple or uncouple them.

567. That **after** January 1, **1895,** it shall be unlawful for **any** corporation, company, or persons operating a railroad, or any transportation company using or leasing **cars** of any description and used in the commerce of the country, or in the construction of railroads, to have upon any railroad in Nebraska for use in transpor-

tation of freight or passengers any car that is not equipped with such safety automatic coupler as provided for in section one of this act [566].

568. That it shall be unlawful for any corporation, company, or person operating any line of railroad in this state to use any **locomotive** engine upon any railroad or in any railroad yard in this state after the first day of January, 1892, that is not equipped with a proper and efficient **power-brake,** commonly called a "drive-brake."

569. That it shall be unlawful for any corporation, company, or person operating a line of railroad in this state to run any train of **cars** after the first day of January, 1895, that shall not have in that train a sufficient number of cars with some kind of efficient automatic **power-brakes,** so that the engineer upon the locomotive car can control the train without requiring brakemen to go between the ends or on the tops of the cars to use, as now, the common hand-brakes.

570. Every railroad corporation, company, or person operating a railroad in this state, and every person using or leasing cars in the transportation business, or in building railroads, shall and are by this act required to include in their **annual report** to the state railroad commissioners the number of locomotive engines and cars used in this state, and what number is equipped with automatic power-**brakes,** and what number of cars equipped with automatic safety **couplers** and the kind of brakes and couplers used and the number of each kind when more than one kind is used.

571. Any corporation, company, or person **operating** a railroad in this state, and using a locomotive engine or running a train of cars, or using any freight, way, or car **contrary to** the provisions of this **act,** shall be deemed guilty of a **misdemeanor,** and shall be subject to a fine of not less than five hundred ($500) dollars, or not more than one thousand ($1,000) dollars for each and every offense, for the benefit of the school fund; *Provided,* The penalties on this section shall not apply to companies hauling cars belonging to railroads other than those of this state which are engaged in interstate traffic; and any railroad **employee** who may be **injured** by the running of such engine, or train, or cars contrary to the provisions of this law shall not be considered as **waiving** his **rights** to recover damage by continuing in the employ of such corporation, company, or person running such engine or trains of cars contrary to this law.

572. Every **railroad** company, as aforesaid, shall be liable for all **damages** inflicted upon the **person** of passengers while being transported over its road, except in cases where the injury done arises from the criminal negligence of the persons injured, or when the injury complained of shall be the violation of some express rule or regulation of said road actually brought to his or her notice.

Laws 1867, p. 89, sec. 3. Liable only when injury has arisen from the negligence of the railroad company. 3, 54. A railroad company cannot loan or transfer its line so as to escape liability for damages except by legislative sanction. When liable for injury received on a connecting road. 26, 169 (41 N. W., 1106). That the injury occurred on Sunday is no defense. 18, 700 (26 N. W., 347).

Secs. 573 to 577 formed secs. 110, 108, 121, 111, 122 respectively, R. S. 1866, pp. 227, 228, 231.

573. In case any **passenger** on any railroad shall be **injured** while on the platform of a car while in motion, or in any baggage, wood, or freight car **in violation of** the printed **regulations** of the company posted up at the time in a conspicuous place inside of its passenger cars then in the train, such **company** shall **not** be **liable** for the injury, provided said company furnished room inside its passenger cars sufficient for the accommodation of its passengers.

574. If any **person** shall, while **in charge of** a **locomotive** engine running upon the railroad of any such corporation, or while acting as the conductor of a car

or train of cars on any such railroad, be **intoxicated**, he shall be deemed guilty of a **misdemeanor**, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not less than six months nor more than one year, and be imprisoned until the fine is paid.

11, 184 (8 N. W., 433).

575. Every such railroad corporation shall start and run their cars for the transportation of passengers and property at **regular** times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of passengers and freight, and shall take, transport, and discharge all passengers to and from such stations as the **trains** stop at, from or to all places and stations upon this said road, on the due payment of fare or freight bill.

576. Any railroad company receiving freight for transportation shall be entitled to the same rights and be subject to the same **liabilities as common carriers.** And whenever two or more railroads are connected together, the company owning either of said roads receiving freight to be transported to any place on the line of either of the roads so connected shall be liable as common carriers for the delivery of such freight to the consignee of said freight, in the same order in which such freight was shipped.

Railroad cannot avoid the liability of a common carrier by a special contract. **5**, 121.

577. In case of the **refusal,** by such corporation or their agent, to take and **transport** any passenger or property, or to deliver the same or either of them under the laws, rules, and usages that regulate common carriers, such corporation shall pay to the party aggrieved all **damages** which shall be sustained thereby, with costs of suit.

Secs. 578 and 579 formed secs. 5 and 4, Laws 1867, p. 89.

578. **No notice,** either express or implied, shall be held to **limit** the **liabilities** of any railroad company as common carriers, unless they shall make it appear that such limitation was actually brought to the knowledge of the opposite party and assented to by him or them, in express terms, before such limitation shall take effect.

579. **Service upon** railroad companies may be made as upon other corporations, or by leaving a copy of the summons by the proper officer with any station agent, ticket agent, conductor, or other officer of said railroad formed within the limits of this state, or left at the usual place of business within said county.

V. PASSENGER RATES.

Secs. 580 to 585. "An act to **regulate** railroad corporations in their **transportation** of passengers and baggage and to fix a maximum rate of charges, and to provide for a penalty for the violation thereof." 1885, p. 285. In force June 5.

580. It shall be **unlawful** for any railroad corporation operating, or which shall hereafter operate, a railroad in this state to charge, collect, demand, or receive for the transportation of any passenger over ten years of age, with baggage, not exceeding two hundred pounds in weight, on any train over its line of road in the state of Nebraska, a sum **exceeding** three cents per mile.

Amended 1887, p. 539.

581. Said railroad corporation shall not charge, collect, demand, or receive within the limits above specified for the transportation of any **child under ten** years old in the care or control of any passenger on any train a sum exceeding one-half of the rates prescribed in section one of this act [580].

582. Nothing herein shall be construed as to prevent any railroad company from adopting the rule that when the **fare** is **paid on** the **train** the conductor

may charge and collect not to exceed twenty-five cents, in addition to the regular fare, for which he shall give back to such passenger a conductor's check which shall be good for the sum so charged at any station on such road on presentation to the agent of said road.

583. It shall be **unlawful** for any railroad corporation operating a railroad in this state **to expel** or remove from any coach used for conveying **passengers** over their line of road any person who offers to pay the regular rate of fare, not to exceed the maximum rate herein fixed for conveying passengers along the line of said road; *Provided,* Said persons conduct themselves properly while remaining therein.

584. Any railroad corporations **violating** any of the provisions of this **act** shall, upon conviction thereof, **forfeit** and pay for each offense not less than two hundred dollars nor more than one thousand dollars, such forfeiture to be paid into the school fund of the county in which such forfeiture is imposed, and shall also be liable to the party injured for all damages he or she sustained thereby.

585. The term "**railroad corporation,**" contained in this act, shall be deemed and **taken to mean** all corporations, companies, or individuals now owning or operating, or which may hereafter own or operate, any railway in whole or in part in this state, and the provisions of this act shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railway in this state (street railways excepted), the same as to railroad corporations hereinbefore mentioned.

Sec. 586 formed sec. 107, R. S. 1866. p. 227.

586. **If** any **passenger** shall **refuse to pay** his **fare,** it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any place within five miles of any station.

11, 596 (10 N. W., 493).

VI. BOARD OF TRANSPORTATION.

Secs. 587 to 608. "An act to regulate railroads, to prevent unjust discrimination, provide for a **board** of **transportation,** and define its duties," etc. 1887, p. 541. In force July 1. (Repealing Laws 1881, ch. 68, and Laws 1885, ch. 65.)

587. That the **provisions** of this act shall **apply** to any common carrier or carriers engaged in the transportation of passengers or property by railroad, under a common control, management, or arrangement for a continuous carriage or shipment from any point in the state of Nebraska to any other point in said state. The **term** "railroad," as **used** in this act, shall include the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and the term "transportation" shall include all instrumentalities of shipment or carriage. All **charges** made for any service rendered or **to be** rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivery, storage, or handling of such property, shall be **reasonable** and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Defines power of board; mandamus will lie to compel railroads to reduce their rates in conformity with orders of board. **22,** 321 (35 N. W., 118). It is the duty of the board to fix reasonable rates in the state without regard to the rate outside. **23,** 126 (36 N. W., 305). Warehouses and depots and other facilities must be maintained where needed. **17,** 647 (24 N. W., 329).

588. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any **special rate,** rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater compensa-

tion for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carriers shall be deemed guilty of unjust discrimination, which is hereby **prohibited** and declared to be unlawful.

589. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect whatsover. Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and **equal facilities** for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such contracting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

590. That it shall be **unlawful** for any common carrier subject to the provisions of this act to **charge** or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, **for a shorter than for a longer distance** over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; *Provided, however,* That upon application to the board appointed under the provisions of this act, such common carrier may, in special cases after investigation by the board, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the board may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

591. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the **pooling** of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

592. That every common carrier subject to the provisions of this act shall print and keep for public inspection **schedules** showing the rates and fares and charges for the transportation of passengers and property which any common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in anywise change, affect, or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be printed in large type, of at least the size of ordinary pica, and copies for the

use of the public shall be kept in every depot or station upon any such railroad, such places and in such form that they can be conveniently inspected. No **advance** shall be made **in** the **rates,** fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public **notice,** which shall plainly state the changes proposed to be made in the schedule then in force and the time made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules then in force at the time and kept for public inspection. **Reductions** in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedule at the time in force and kept for public inspection. And when any such common carrier shall have established and published its rates, fares, and charges, in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

593. That every common carrier subject to the provisions of this act shall file with the board hereinafter provided for copies of its **schedules** of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said board of all changes made in the same. Every such common carrier shall also file with said board copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party; and in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish **joint tariffs** of rates or fares, or charges for such continuous lines or routes, copies of such joint tariff shall also, in like manner, be **filed** with said board. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said board, in so far as may, in the judgment of the board, be deemed practicable, and said board shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier, party thereto, to observe and adhere to the rates, fares, or charges thus made and published. If any such common carrier shall **neglect** or refuse to file or publish its schedule of rates, fares, and charges, as provided in this section, or any part of the same, such common carrier shall, in addition to other **penalties** herein prescribed, be subject to a writ of mandamus, to be issued by any district court in the judicial district wherein the principal office of said common carriers is situated, or wherein such offense may be committed, to compel compliance with the provisions of this act, and such writ shall issue in the name of the state on the relation of the board provided for in this act, and a failure to comply with its requirements shall be punishable as and for a contempt; and the said board as complainants may also apply in any court of competent jurisdiction for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property as mentioned in the

first section of this act until such common carrier shall have complied with the aforesaid provisions of this section.

594. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by a change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freight from being treated as one continuous carriage from the place of shipment to the place of destination unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any attempt to avoid or necessarily interrupt such continuous carriage or to evade any provisions of this act.

595. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violations of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

596. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the board as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any court of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the methods of procedure herein provided for he or they will adopt. In any such action brought in the district court for the recovery of damages, said court may compel any director, officer, receiver, trustee, or agent of the corporation or company, defendant in such suit, to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company, party to any such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

597. The attorney general, secretary of state, auditor of public accounts, state treasurer, and commissioner of public lands and buildings shall constitute a board of transportation, which board shall have power by a four-fifths vote to appoint three (3) secretaries to assist in the performance of the duties of said board, and they shall each be paid a salary of two thousand ($2,000) dollars per annum. Not more than two of the secretaries shall be appointed from the same political party. The secretaries of the board shall take the oath of office prescribed for state officers, and shall enter into bonds, to be approved by the governor, in the sum of ten thousand ($10,000) dollars, conditioned for the faithful performance of their duties. No persons in the employ of any railroad corporation, or holding stock in any railroad corporation, shall be employed as secretary.

598. That the board hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the board to perform the duties and carry

out the objects for which it was created; and for the purposes of this act the board shall have **power** to require the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any of the district courts in this state, or of the supreme court, in requiring the attendance and testimony of witnesses, and the production of books, papers, and documents under the provisions of this section; and any court of competent jurisdiction, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act or other person, issue an order requiring such common carrier or other person to appear before said board (and produce books and papers if ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Board has jurisdiction to hear complaints and make orders relative to highway crossings over railroads, and such orders may be enforced by mandamus. 29, 412 (45 N. W., 469).

599. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said board by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the board to such common carrier, who shall be called upon to satisfy the **complaint** or to answer the same in writing within a reasonable time, to be specified by the board. If such common carrier, within the time specified, shall make **reparation** for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only of the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the board to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of absence of direct damage to the complainant.

600. That whenever an **investigation** shall be made by said board it shall be its duty to make a report in writing in respect thereto, which shall include the **findings** of fact upon which the conclusions of the board are based, together with its recommendation as to what reparation, if any, could be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall hereafter, in all judicial proceedings, be deemed *prima facie* **evidence** as to each and every fact found. All reports of investigations made by the board shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

601. That if in any case in which an investigation shall be made by said board it shall be made to appear to the satisfaction of the board, either by the testimony of witnesses or other evidence, that anything has been done, or omitted to be done, in **violation** of the provisions of this act, or any law cognizable by said board **by** any **common carrier,** or that injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the board to forthwith cause a

copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the board; and if, within the time specified, it shall be made to appear to the board that said common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the board, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the board, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

602. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse, or neglect to obey any lawful order or requirement of the board in this act named, it shall be the duty of the board, and lawful for any company or person interested in such order or requirement to apply in a summary way, by petition filed in the judicial district in which the common carrier complained of has its principal office, or in the district in which the violation or disobedience of such order or requirements shall happen, alleging such violation or disobedience as the case may be, and the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable, and said court shall proceed to hear and determine the matter speedily as a court of equity, but in such manner as to do justice in the premises; and to this end such court shall have, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint; and such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said board shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court on such hearing, or on report of any such person or persons, that the lawful order or requirement of said board drawn in question has been violated or disobeyed it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restain such common carrier from further continuing such violation or disobedience of such order or requirement of said board, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and, if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or in the treasury; and payment thereof made, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court. Either party to such proceedings before said court may appeal to the supreme court of the state, under the

same regulations as now provided by law in respect to appeals in ordinary cases; but such appeals shall not operate to stay or supersede the order of the court, or the execution of any writ or process thereon, and such court may in every such matter order the payment of such costs and counsel fees as shall be deemed reasonable.

603. That the board may conduct its **proceedings** in such a manner as will best conduce to the proper dispatch of business, and to the ends of justice, a majority of the board shall constitute a quorum for the transaction of business, but no member of said board shall participate in any hearing or proceeding in which he is pecuniarily interested. Any party may appear before said board and be heard in person or by attorney. Every vote and official act of the board shall be entered of record, and its proceedings shall be public, upon the request of either party interested. Said board shall have an official seal, which shall be judicially noticed. Either of the members of the board, or of the secretaries, may administer oaths and affirmations. The board shall have authority to employ and fix the compensation of a **stenographer** for the use of said board and its secretaries, whose salary shall not exceed one thousand and five hundred dollars ($1,500) per year. Said **board** shall have the **general** supervision of all railroads operated by steam in the state, and shall inquire into any neglect of **duty** or violation of any of the laws of this state by railroad corporations doing business in this state, or by any officer, agent, or employee of any railroad corporation doing business in this state; and shall from time to time carefully examine and inspect the condition of each railroad in this state, and its equipments and manner of the conduct and management of the same, with reference to the public safety, interest, and conveniences. It shall carefully investigate any complaint made in writing, and under oath, concerning any lack of facilities or accommodations furnished by any railroad corporation doing business in this state, for the comfort, convenience, and accommodation of individuals and the public, or any unjust discrimination against either any person, firm or corporation, or locality, either in rates, facilites furnished, or otherwise; and whenever, in the judgment of said board, any repairs are necessary upon any portion of the road, or upon any stations, depots, station houses, or warehouses, or upon any of the rolling stock of any railroad doing business in this state, or additions to, or any changes in its rolling stock, stations, depots, station houses, or warehouses are necessary in order to secure the safety, comfort, accommodation, and convenience of the public and individuals, or any change in the mode of conducting its business or operating its road is reasonable and expedient in order to promote the security and accommodation of the public, or in order to prevent unjust discriminations against either persons or places, it shall make a finding of the facts, and an order requiring said railroad corporation to make such repairs, improvements, or additions to its rolling stock, road, stations, depots, or warehouses, or to make such changes either in the manner of conducting its business, or in the manner of operating its road, as such road shall deem proper, reasonable, and expedient; and said finding shall be entered in a record kept for that purpose, and said board shall cause a copy of the same to be served on the said railroad corporation by any sheriff or constable in this state, in the same manner as a summons is required to be served, and shall also transmit to the person, firm, or corporation interested a copy of the same. Said railroad corporation shall, within ten days after being served with a copy of said findings and order, show cause, if any it has, why it should not comply with said order, by filing with said board an answer, verified in the same manner as pleadings of fact in the district court are required to be verified. If no answer shall be filed as aforesaid, then such finding and order shall be final and conclusive as against said railroad corporation.

Upon the filing of an answer, as provided for in this section, the said board shall set a day, not exceeding thirty days from the date of the filing of such answer, for the hearing of the matter, and shall notify said railroad company or any other person or persons or corporations interested of the time so fixed, and the place of hearing the same, and shall carefully and fully investigate the matter, and for that purpose may subpœna witnesses, and compel their attendance, and the productions of any books or papers, in the same manner as the courts of law of this state may do. After a full investigation of the matter said board shall again make a finding of the facts and make such an order as it may deem just in the premises. If said railroad shall refuse or neglect to comply with such order, the board shall order the attorney general or the county attorney of the proper county to institute a suit to compel such railroad company to comply with such order; and it shall be the duty of the attorney general or the county attorney of the proper county, at the request of the board or any person interested in any such order or finding, to apply to the supreme court, or to the district court of any county through or into which its line of road may run, in the name of the state and on the relation of said board, for a writ of mandamus to compel such railroad company to comply with such order; and upon the hearing of any such cause such finding and order shall be, as against such railroad company, *prima facie* evidence of the reasonableness of such order and of the necessity of such repairs, changes, additions, or improvements, or other matters in such order required to be done or omitted.

604. That the **principal office** of the board shall be in the city of Lincoln where its general sessions shall be held; but whenever the convenience of the public or of the party may be promoted, or expenses prevented thereby, the board may hold special sessions in any part of the state. The board of transportation or any member thereof or either of its secretaries may prosecute any inquiry necessary to its duties in any part of the state, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

605. That the board of transportation is hereby authorized to require **annual reports from** all **common carriers** subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the board may need information. Such annual reports will show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amount expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the board may require, and the said board may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the board it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts and the manner in which such accounts shall be kept.

See sec. 499 *ante*.

606. Said **board** shall, on or before the first Monday in December of each year, make a **report to** the **governor** of their doings for the preceding fiscal year ending June 30. This report shall contain such information and data collected by the board as may be considered of value in the determination of questions connected with the regulation of commerce in the state, together with such recommendation as to additional legislation relating thereto as the board may deem necessary.

607. [**Application of Act—Exceptions.**]—That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States or municipal governments, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of the gospel; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers or employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies to their officers and employees or others, and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.

608. To carry out the provisions of this act without undue burden to the state officers who compose the state board of transportation, their **secretaries** are hereby **empowered**, in all matters of examination or investigation, to perform the duties prescribed for the board themselves; *Provided*, That all final decisions shall be made by the board themselves.

VII. MISCELLANEOUS PROVISIONS.

Secs. 609 and 610 formed secs. 117 and 84, R. S. 1866, pp. 230 and 218.

609. Every **railroad** company shall have power and is hereby authorized to **mortgage** or execute **deeds of trust** of the whole or any part of their property and franchises, including any lands or other property granted to said company by the United States, to secure money borrowed by them for the construction and equipment of their roads, and may issue their corporate **bonds** in sums not less than five hundred dollars—secured by said mortgages or deeds of trust—payable to bearer or otherwise, and, if payable to bearer, negotiable by delivery, bearing interest at a rate not to exceed ten per cent per annum, and convertible into stock, or not, as shall be plainly expressed on the face of each and every bond so issued by said company, and may sell them at such rates or prices as they may deem proper; and if said bonds should be sold below their nominal or par value, they shall be valid and binding upon the company, and no plea of usury shall be put in or allowed by said company upon any suit or proceedings upon the same. The principal and interest on said bonds, or either of them, may be made payable within or without this territory.

610. Such company shall have **power to borrow money** on the credit of the corporation, and may execute bonds or promissory notes therefor, and to secure the payment thereof may pledge the property and income of such company.

Secs. 611 to 613 formed secs. 118 to 120, ch. 25, R. S. 1866, p. 230.

611. Any **mortgage** or deed of trust made upon the lands, roads, or other property of any railroad company shall bind and be a valid **lien** upon all the property mentioned in such deed or mortgage, including rolling stock; and the purchaser under foreclosure of mortgage or trust deed shall have and enjoy all the rights of a purchaser on execution sale; *Provided*, That nothing in this subdivision shall be so construed as in any manner to interfere with, change, or modify the

rights of this state, or of the United States, to any lands granted by congress to this state or to said companies, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States.

612. Said **mortgages** or deeds of trust may, by their terms, include and **cover** not only the **property** of the companies making them at the time of their date, but property both real and personal which may **thereafter** be **acquired** by them, together with all the material and property necessary for the use and operation of said road, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

613. Said **mortgages** or deeds of trust shall be **recorded** in the office of the register of deeds of each organized county through which said road mortgaged or deeded may run in this state, or wherever it may hold lands included in said mortgages or deeds of trust, and shall be notice to all the world of the rights of all parties under the same; and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock, personal property, and material necessary for operating the road of said company, belonging to said road, and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded shall have the same effect, both as to notice and otherwise, as to the real estate covered by them.

Amended 1887, p. 376.

Sec. 614. "An act to **prevent** railroad corporations to impose upon the people by **bogus surveys** in counties or precincts where they are asked to vote bonds or other valuables in aid of such railroad corporations." 1879, p. 151. In force June 1.

614. **No proposition** shall be **submitted** to the electors of any county in this state for donations of bonds or any other valuables, to any railroad corporation, **unless** said railroad corporation, through its authorized and responsible agent, files for record in the county clerk's office, where such donations of bonds or any other valuables are to be voted upon, a **plat of** the **survey** showing their exact line of route through said county, within at least two weeks previous to such an election; and no bonds, and so forth, shall be valid in case they are voted unless said railroad corporation build their line of road within forty rods of their survey as **filed** in the county clerk's office.

Secs. 615 and 616. "An act to compel railroads to **name** their **stations** the same as the city or village in which located, and to fix a penalty for a failure so to do." 1891, p. 221. In force Aug. 1.

615. All railroad companies operating lines of railway in this state shall, on a petition signed by a majority of the legal voters of such city or village to the railroad company, call any **station** located in any city or village the same as the corporate **name** of said city or village, and the name thereof shall be prominently exposed to public view.

616. Any railroad company **failing to comply** with the provisions of this act shall be guilty of a **misdemeanor,** and on conviction thereof shall be fined in a sum not less than one hundred ($100) dollars nor more than five hundred ($500) dollars.

Secs. 617 to 621. "An act authorizing the **incorporation of union depot companies.**" 1887, p. 342. In force April 4.

617. Any **number of persons,** not less than five, may associate themselves together and become incorporated for the purpose of constructing, maintaining, and operating union freight and passenger depots, and the tracks, structures, appliances, and appurtenances incident and necessary to the use of the same, in like manner and by like **proceedings** as are now provided in chapter 16 of the Revised Statutes of 1885 [ch. 9, Corporations], for the organization of railway companies, including the exercise of the power of eminent domain.

618. Such union depot **companies** shall be authorized and **empowered** to locate, establish, construct, furnish, maintain, operate, and enjoy union freight and passenger railway depots at such points as may be determined upon, with such tracks, side tracks, turn-outs, switches, offices, and structures as may be deemed necessary; and shall have power to acquire, take, and hold all real, personal, and mixed property necessary or convenient for the execution of the powers herein granted, and the accomplishment of the objects and purposes of this act.

619. Every union depot company shall have power and is hereby authorized to **mortgage** or execute deeds of trust of the whole or any part of its property and franchises, including all lands owned or to be acquired by said company, to secure money borrowed by it for the construction and equipment of such union depots and appurtenances; and may issue its corporate **bonds** in sums of not less than one thousand ($1,000) dollars each, secured by said mortgages or deeds of trust, payable to bearer or otherwise; and, if payable to bearer, negotiable by delivery, and bearing interest at a rate not to exceed seven per centum per annum, and convertible into stock, or not, as shall be expressed on the face of each and every bond so issued by said company; and may sell such bonds at such rates or prices as they may deem proper; and if said bonds shall be sold below the nominal or par value, they shall be binding upon said company, and no plea of usury shall be put in or allowed by said company upon any suit or proceedings upon the same. The principal and interest on said bonds, or either of them, may be made payable within or without the state; and such bonds may be issued to the amount deemed necessary by the board of directors of said company, for the construction and completion of said union depot and appurtenances.

620. Any **mortgage** or deed of trust made upon the real or personal property of such union depot company shall bind and be a valid **lien** upon all the property mentioned in such deed or mortgage, and the purchase [r] under foreclosure of said mortgage or deed of trust shall have and enjoy all the rights of a purchaser on execution sale.

621. Said **mortgages** or deeds of trust may by their terms include and **cover** not only the property of the companies making them at the time of their date, but **property** both real and personal which may **thereafter** be **acquired** by them, together with all the material and property necessary for the use and operation of said union depots, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

VIII. STREET RAILWAYS.

Secs. 622 to 626. "An act to provide for the incorporation of **street railroad** companies within the cities of this state." 1877, p. 135. In force June 1.

622. Any number of persons may be associated and **incorporated** under the general laws of this state providing for the creation of corporations for the purpose of constructing and operating a street railroad within any of the cities of this state, upon procuring the consent of a majority of the electors of any such city as hereinafter provided.

623. Every such corporation, previous to the commencement of any business, except its own organization, must **adopt articles** of incorporation and have them recorded in the office of the county clerk of the county in which the city within which it is proposed to construct and operate such street railroad is situated, and must procure the **consent of** a majority of the **electors** of such city as herein provided.

624. The **articles** of incorporation must **fix** the **termini** of such street rail-

road, and state the street or streets through which it is proposed to construct and operate the same.

625. The question of the **consent of** a majority of the **electors** of any such city to the constructing and operating of any such street railroad shall be determined by submitting the question to the electors of such city at an election to be held for that purpose, and of which **election** it shall be the duty of the mayor of any such city, upon the request of the common council of said city, to give at least ten days' notice by publishing a notice in some newspaper published in such city, which notice shall state the termini of such proposed street railroad and the street or streets through which it is proposed to construct and operate the same, the form in which the question shall be taken, and the time when such election will be held.

626. Every such **election** shall be held at the **time** designated in the notice, and shall be held in the same **manner** and at the same places as the general city elections, and the returns shall be canvassed by the council of such city at its next meeting after any such election and the result declared, and if a majority of the votes cast at such election shall be in favor of the constructing and operating such proposed street railroad, the council shall cause the city clerk to make out a certificate of the result, stating that the consent of a majority of the electors of such city has been given to the constructing and operating of such street railroad, and deliver the same to the chief officer of such street railroad company, who shall cause the same to be recorded in the office of the county clerk where the articles of association of such street railroad company are recorded, and in the same book, and such certificate shall be *prima facie* evidence of the facts therein stated; and, thereupon, such street railroad company shall be authorized to proceed and construct and operate such street railroad, as described in its articles of association, or any portion thereof, subject to such rules and regulations as may be established by ordinances of such city.

Secs. 627 to 633. "An act to enable **street railways** to **unite** their roads by consolidation, purchase, sale, by subscription to or purchase of capital stock, and to mortgage their railroads and property for the construction, equipment, and extension of their roads." 1889, p. 398. In force February 12.

627. Any **street railway** company existing in pursuance of law in this state or which may be hereafter created and organized therein, any portion of whose road has been located and constructed so as to form with the road of any other street railway company existing, created, and organized as aforesaid, connected or continuous lines and routes of travel or transportation, is hereby authorized to **consolidate** its railway property and appurtenances with such other street railway and its property and appurtenances into a single corporation; *Provided*, That any such consolidation or transfer of the property, rights, powers, and franchises of any such company shall not in any manner impair or affect any existing right of reversion under which any of said companies now chartered or organized may exist, in the manner following: The board of directors of said two or more corporations may enter into an agreement, under the corporate seals of each, for the consolidation of said two or more corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of the directors thereof, which shall not be less than seven (7) nor more than eleven (11), the time and place of holding the first election of directors, the number of shares of stock in the new corporation, the amount of each share, the manner of converting the shares of corporate stock in each of said two or more corporations into shares in such new corporation, the manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations, and such resulting consolidated

corporation shall by operation of law succeed to and hold in perpetuity all the property, rights, powers, and franchises converted upon said constituent companies, and shall assume and perform all the public obligations, duties, agreements, and requirements as common carriers imposed upon said constituent companies.

628. Upon making the **agreement** mentioned in the preceding section in the manner required therein, and **filing** a duplicate thereof in the office of the secretary of state and county clerk of the county in which the corporation exists, accompanied by the consent in writing of the owners of two-third (⅔) of the capital stock of each of said constituent **companies,** and consent being duly acknowledged by a notary public under his seal of office in like manner as is prescribed for the acknowledgment of deeds, the said two or more corporations shall be **merged** in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein.

629. Upon the election of the first board of directors of the corporation created by the agreement in the preceding sections mentioned, all and singular the **rights** and franchises of each and all of said two or more corporations, parties to such agreement, and all and singular the rights and interest in and to every species of property, real, personal, and mixed, and things in connection, shall be deemed to be transferred to and **vested in** such **new corporation** without any other deed or transfer, and such new corporation shall hold and enjoy the same and all other rights of property vested in the said two or more corporations; *Provided,* That all the rights of creditors and all liens upon the property of either of said corporations shall be and hereby are preserved unimpaired; and the respective corporations shall continue to exist so far as may be necessary to enforce the same.

630. Any street railway company existing in pursuance of law in this state may, at any time, by means of subscription to the capital stock of any **other company,** or otherwise, **aid** such company in the construction of its road for the purpose of forming a connection with the line of road owned by such other company.

631. Any street railway company existing in pursuance of law in this state may **lease** or purchase any part or all of any **other** street **railway** constructed by any other company, or may purchase the capital stock of the same, or may sell and convey by deed or otherwise, or may lease to another street railway company, any part or all of its own railway and franchises upon such terms and conditions as may be agreed upon between the said companies respectively, and any two or more street railway companies, whose lines are so connected as to form continuous routes of travel, may perfect any arrangement for their common benefit to assist and promote the object for which they were created.

632. Any street railway existing in pursuance of law in this state shall have **power** and is hereby authorized to **mortgage** and execute deeds of trust upon its railway and property, in whole or in part, including its real and personal property and franchises, to secure money borrowed for the construction and equipment of their roads, and may also issue their corporate **bonds** in sums not less than one thousand dollars ($1,000), to make all of said mortgages or deeds of trust payable to bearer or otherwise, negotiable by delivery, bearing interest at rates not to exceed seven (7) per centum per annum, convertible into capital stock or not at the option of the holder, and may sell the same at such rates and prices as they may deem proper, and if said bonds shall be sold below their nominal par value they shall be valid and binding upon the company, the principal and interest of said bonds, or either of them, may be made payable within or without this state at such place as may be determined upon by said company.

633. The word "**street railway,**" as used in the foregoing section, shall be **construed** to embrace all street railroads built and operated for the convenience of passengers along the streets and alleys and public thoroughfares of cities in this state. The motive power by which the same may be operated shall be restricted to horse, mule, electric, or cable powers.

Telegraphs and Telephones.

Secs. 634 to 646. "An act to **prohibit extortion** and discrimination in the transmission of telegraph dispatches." 1883, p. 321. In force July 1.

634. That **all associations,** whether the same shall have been or may hereafter be organized or incorporated under the laws of this state, or by and under authority of any other state or territory, or by authority of the United States, whose object and purpose is the transmission, collection, and distribution of dispatches by telegraph, shall be **subject to** the regulations and restrictions hereinafter prescribed by this **act.**

635. **Every** telegraph **company** and every press association or corporation engaged in the transmission, collection, distribution, or delivery of telegraphic dispatches, either for private use or for publication in newspapers, shall, within thirty days after this act goes into effect, **file** in the office of the secretary of state a **statement,** certified to under oath by its president and secretary or by two of its officers, embodying the following information, to-wit: The name of the association, amount of capital invested, character of its business, together with a true copy of its articles of incorporation or articles of copartnership, with regulations and by-laws then in force.

636. It shall be the duty of the **secretary of state** to issue a **certificate to** every association or corporation that has filed the statement required by the second section of this act upon payment of five ($5) dollars, which certificate shall convey authority to such association or corporation to conduct its business within this state, under the restrictions and penalties imposed herein.

637. Every telegraph **company,** press association, or corporation engaged in the transmission, collection, and delivery of telegraphic dispatches that shall refuse or **fail to comply** with the above provisions within the time herein prescribed, shall forfeit its right to carry on the collection, transmission, and delivery of dispatches for publication or for private use, and shall furthermore **forfeit** to the county where such business is carried on, for each and every day it so continues in violation of this act, the penal sum of one thousand (1,000) dollars, to be recovered in any court of competent jurisdiction, and it shall be the duty of district attorneys to prosecute such violations of this act at the expense of the respective counties wherein said act is violated.

638. **All** telegraph **companies** and associations operating telegraph lines in this state shall **transmit** and forward all dispatches directed to newspapers, or private individuals, or public officers, **with impartiality,** in the order in which they are received, and use due diligence in their delivery, without discrimination as to any person or party to whom they may be directed.

639. Every officer or employee of any telegraph company or association engaged in the transmission of dispatches who shall willfully **delay** the transmission or delivery of any **dispatch,** or divulge the contents of any dispatch entrusted to his or her care, to any person except the party entitled to receive the same, shall be guilty of a misdemeanor, and upon conviction shall be punished by **fine** of not less than fifty ($50) nor more than one hundred ($100) dollars for each offense, or imprisonment of not less than thirty days nor more than three months in the county jail, at the discretion of the court.

640. It shall be unlawful for any telegraph **company**, its agents or operators, to demand, **charge**, or receive from any individual, association, or corporation a greater sum for the transmission and delivery of any telegram or message over a given distance than it demands, charges, or receives for the transmission and delivery of any telegram or message containing an equal number of words over a greater distance, providing that dispatches transmitted during the night and dispatches for publication in newspapers may be forwarded and delivered at reduced rates; such rates must, however, be uniform to all patrons for the same service.

641. [**Favoritism.**]—It shall be unlawful for any telegraph company, association, or organization engaged in the business of forwarding dispatches by telegraph, to demand, collect, or receive from any publisher or proprietor of a newspaper any greater sum for a given service than it demands, charges, or collects from the publisher or proprietor of any other newspaper for a like service, and the violation of the provisions of sections seven and eight of this act by any telegraph company or association shall constitute a misdemeanor, and upon conviction said telegraph company or association shall be fined for each and every offense in any sum not less than one hundred ($100) dollars nor more than one thousand ($1,000) dollars, with costs of prosecution, and in addition thereto such telegraph company or association shall be liable for all damages sustained by the person or parties in consequence of such discrimination.

642. Every telegraph **company** and every press association engaged in the transmission, collection, distribution, or publication of dispatches shall **afford** the same and **equal facilities to all** publishers of newspapers, and furnish the dispatches collected by them for publication in any given locality to all newspapers there published on the same conditions as to payment and delivery.

643. Any press **association**, corporation, or organization **violating** the foregoing section shall be deemed guilty of a misdemeanor, and upon conviction shall, for each and every offense, be **fined** in any sum not less than one hundred ($100) nor more than one thousand ($1,000) dollars, and in addition thereto such association and the members therof shall be jointly and severally liable for all damages sustained by the owner of any newspaper in consequence of such discrimination.

644. If any telegraph **company**, association, or organization engaged in the transmission of telegraph dispatches from any place in this state, or the person having the control or management thereof, **refuse to receive** dispatches from any person, corporation, or any other telegraph company, or to transmit the same with fidelity and without unreasonable delay, it shall be guilty of a misdemeanor, and upon conviction shall be **fined** for each and every offense in the sum of not less than fifty ($50) nor more than one hundred ($100) dollars, and in addition be liable for damages to the person or corporation sustaining a loss by reason of such refusal or failure to so transmit.

645. Any telegraph **company** engaged in the transmission of telegraphic dispatches is hereby declared to be **liable for** the non-delivery of dispatches entrusted to its care, and for all **mistakes** in transmitting messages made by any person in its employ, and for damages resulting from a failure to perform any other duty required by law, and any such telegraph company shall not be exempted from any such liability by reason of any clause, condition, or agreement contained in its printed blanks.

This requirement is reasonable and is binding on all companies doing business in the state, even if the message is to be sent out of the state. **28**, 667 (44 N. W., 1064).

646. In all cases where application is made to any telegraph company, or the **operator**, agent, clerk, or servant thereof, to send a dispatch, it shall be the

duty of such operator, agent, or clerk, who may receive dispatches at that station, plainly to inform the applicant, and if required by him to write upon the dispatch that the **line** is **not in** working **order,** or that the dispatches already on hand for transmission will occupy the line, so that the dispatch offered cannot be transmitted within the time required, if the facts be so; and for omitting so to do, or for intentionally giving false information to the applicant in relation to the time within which the dispatch offered may be sent, such operator, agent, or clerk, and the company by which he is employed, shall incur a like penalty as in section eleven of this act [644].

Secs. 647 and 648. "An act granting the **right of way** to telegraph or telephone companies **along public highways,** and providing for a penalty in case of malicious injury or interference with the same." 1887, p. 634. In force July 1.

647. That any telegraph or telephone company incorporated or doing business in this state shall be and is hereby granted the **right of way** along any of the public roads of the state for the **erection of poles** and wires; *Provided,* That poles shall be set at least six feet within the boundary line of said roadway and not placed so as to interfere with road crossings; *Provided,* That said wires shall be placed at the height of not less than twenty feet above all road crossings.

648. Any **person** or persons who shall **break,** injure, **destroy,** or otherwise interfere with the **poles,** wires, or fixtures of any telegraph or telephone company in this state shall be subject to action and **penalty** prescribed in section 98, chapter 13, Criminal Code.

Telephone companies are public servants and must treat all alike. **17,** 126 (22 N. W., 237).

Miscellaneous Corporations.

BRIDGE COMPANIES.

Secs. 649 to 656 formed secs. 29 to 36, ch. 25, R. S. 1866, p. 200.

649. Whenever any number of persons, not less than five, associate themselves together for the purpose of constructing a bridge over any of the streams of water in this state, they shall, under their hands and seals, make a certificate, specifying the amount of capital stock necessary, the amount of each share, the place where such bridge is to be built, and on what stream; and said certificate shall be acknowledged, certified and forwarded to the secretary of state, and by him recorded and copied; and when so incorporated, they are hereby authorized to carry on the operations named in said certificate of incorporation, and by the name and style provided in such certificates shall be deemed a **body corporate** with succession, and they and their associates, successors, and assigns shall have the same general corporate powers and be subject to all restrictions hereafter provided; but in all cases the banks on both sides of the stream where the said bridge is to be erected shall be owned by said company, or they shall obtain in writing the consent of the owner or owners of the banks where the said bridge is to be erected to erect the said bridge as aforesaid, unless the said banks at such point shall be in a public highway.

Proposition to vote bonds containing provision for collecting tolls from persons crossing the bridge not void, especially after bonds negotiated. **6,** 52.

650. The corporators herein named shall **open** the **books** of said company for **subscription** to the capital stock of said bridge, and so soon thereafter as ten per cent of the capital shall be subscribed, they shall call a meeting of the persons who have subscribed stock as aforesaid, and shall then and there proceed to elect five directors, who shall be stockholders in said company, who shall hold their offices as such directors for one year from and after said election, and until their successors are elected and qualified, one of whom shall be president, one treasurer,

and one secretary, to be named on the tickets when voted for by the stockholders as aforesaid; each stockholder shall be entitled to one vote for each and every share of stock he may own; and after the first election no stockholder shall be entitled to a greater number of votes than the number of shares he may have paid into the said company.

651. The **treasurer** of said company, before entering upon his duties of office, shall enter into a **bond,** with good and sufficient security, to be approved by said board of directors, payable to the said company, conditioned for the faithful performance of all and singular the duties of his said office, and that he will well and truly account for and pay over to the said company all moneys and property that shall, from time to time, come into his hands by virtue of his said office, and that he will use due and proper diligence to collect all moneys and demands that from time to time shall be due and owing to the said company, which it shall be his duty by law to collect.

652. The **president** shall preside at all meetings when present and not otherwise incapacitated, in which case, or in case of his absence, the board of directors shall choose a president from among their number, who shall perform the duties of the president at such meeting, and perform such duties as may from time to time be pointed out by the by-laws and rules of said company.

653. The **secretary** shall keep a record of all meetings of the board of directors and other proceedings of said company not required to be performed by any other officers of the said board of directors, and perform such other and further duties as may be assigned him from time to time by the rules and by-laws of the said company.

654. The said company shall have power, from time to time, at any regular meeting of the board of directors, to make, alter, and change such **by-laws** and rules for the government of the said company.

655. The company, previous to receiving any **tolls** upon said bridge, shall set up and keep in a conspicuous place a board on said bridge, on which shall be written, painted, or printed, in a plain and legible manner, the **rates** of toll, which rates of toll shall have been prescribed by the district court of the proper county; and if any company shall demand or receive any greater rates of toll than the rate prescribed by said court, they shall be subject to a fine of ten dollars for each offense.

656. The **compensation of** the president and other **officers** of such company shall be regulated and fixed by the rules and by-laws of such company from time to time.

Secs. 657 to 660. "An act to enable associations of persons to become **bodies corporate** for the purpose of acquiring and holding title to real estate, issuing and negotiating bonds thereon, and borrowing money for the use of the members of said corporation." 1891, p. 217. In force August 1.

657. That any number of persons, not exceeding twenty, may associate themsalves together and become a **corporation** as provided in chapter (16) of the Compiled Statutes of Nebraska for 1887, commencing at section (123) of said chapter, entitled Corporations [336], for the purpose of acquiring and **holding real estate,** issuing and **negotiating bonds** thereon and borrowing money for the use of the members of said corporation; *Provided,* That no person shall become a member of said corporation unless such person shall be the owner in his own right in fee simple of at least forty (40) acres of land situated in the county in which such corporation may be formed; *Provided further,* That the bonds so issued shall not bear a greater rate of interest than seven per cent per annum.

658. Each **member** of such corporation shall **convey** to said corporation by good and sufficient warranty deed clear of all incumbrance at least forty (40) acres

of **land** situated in the county in which such corporation may be formed, and that the land so conveyed shall constitute the capital stock of said corporation.

659. That each **member** of said corporation in consideration of the land so conveyed by such member shall **receive** paid up **shares** of stock of said corporation to the value of the land so conveyed, and the value of such land shall be ascertained by the appraisement of disinterested appraisers, said appraisers to be appointed and the appraisement conducted in such manner as may be provided by the constitution and by-laws of such corporation.

660. Such corporation shall be empowered and authorized to levy, **assess** and collect from its respective members such sums of money as may be deemed necessary to pay the interest that may accrue on the bonds so issued and money so borrowed and to enforce the collection and payment of the same by such laws as they may adopt; *Provided*, That no person shall hold more than ten (10) **shares** in his own right, such shares not to exceed two hundred ($200) dollars each.

III. CORPORATIONS NOT FOR PECUNIARY PROFIT.

Charitable and Fraternal Societies.

Secs. 661 to 666. "An act for the **incorporation of charitable societies.**" In force February 25, 1873. G. S., 209.

661. That three or more persons who may desire to become incorporated for any charitable purpose may execute under their hands, and acknowledge before some person within the state authorized to take the acknowledgment of deeds, one or more duplicate **articles of agreement** as hereinafter specified, one copy whereof shall be filed and recorded in the office of the secretary of state. And a record shall be made of such articles or of a certified copy thereof in the clerk's office of the county or counties in this state in which the office of such association for the transaction of business may be located; and upon the execution and acknowledgment of such articles, the signers thereof, and those who may hereafter become associated with them, shall become a body politic and corporate, for the purposes set forth in said articles. Charitable societies within the **meaning** of this act shall be construed to include only societies intended to assist those suffering from any disease, infirmity, or necessity; *Provided, however*, That no person shall, by reason of membership in any such society, become entitled thereby to any special dividend or benefit of the funds thereof, depending on such membership.

662. The **articles of association** shall contain: *First*—The names of the persons associating in the first instance and their places of residence. *Second*—The name of such corporation and the place where its office for the transaction of business is located, and the period for which it is incorporated, not exceeding thirty years. *Third*—The object for which it was organized, which shall be stated with convenient certainty and expressly. *Fourth*—The number of its trustees and regular officers, and the time and place of holding its annual meeting. *Fifth*—The terms and conditions of membership.

663. The affairs of such corporations shall be managed by not less than five nor more than twenty **trustees**, to be chosen by the members thereof, and to hold office for one year and until their successors be chosen. And the regular officers thereof, except the treasurer and secretary, shall be chosen from such trustees. The officers may be chosen by the trustees or by the members of such corporation, as the articles shall prescribe. The by-laws of such corporation shall be adopted by the trustees, who may change them at their pleasure. All such trustees shall be citizens of the United States and residents of the state of Nebraska. A majority of the trustees shall be a quorum to transact business.

664. No such corporation shall have power to take or hold any **real estate,** except such as may be necessary for any hospital or asylum under its control, or for the transaction of its business, for a longer period than ten years.

665. All the **funds** received by any such corporation shall be used in the first instance, or shall be **invested,** and the income thereof used (after paying the necessary expenses) for the exclusive purpose set forth in the articles of association, and no portion thereof shall be used for any such purpose except within this state, and no portion of the funds of any such corporation shall be used or contributed towards the erection, completion, or furnishing of any building not owned or used by such corporation. Such corporation may take, by gift, purchase, or devise, property to an amount not exceeding one hundred thousand dollars, and it shall be lawful to invest the same upon mortgage, or in or by loan on railroad stocks or bonds, or any city, county, state, or government securities; but no loan shall be made to any trustee or officer of such corporation; *Provided,* That any such corporation may, in its articles of agreement, specify the kind of securities in which its funds shall be invested, and that no part of its funds shall be invested in any other securities than those named in its articles, or where the securities shall not be specified in the articles of agreement, then such funds shall only be invested in such securities as are specified in this act.

666. Any corporation formed under this act shall, whenever required by the attorney general, or by the legislature, report a full **statement of its affairs** under the oath of at least two of its trustees, and for any neglect to furnish such report when required, all of the trustees so neglecting shall be liable to a penalty of fifty dollars each, to be recovered by action of debt in the name of the people of Nebraska.

Secs. 667 and 668. "An act incorporating subordinate **lodges** of Masons, Odd Fellows, and Good Templars." 1869, p. 64. In force February 4.

667. All organizations known as subordinate **lodges** of the Ancient Free and Accepted Masons, all organizations known as subordinate lodges of the Independent Order of Odd Fellows, and Farmers' Alliance and Knights of Labor, and also the organization known as the grand lodge Knights of Pythias of Nebraska, together with such subordinate lodges of said Grand Lodge Knights of Pythias of Nebraska within this state as have been, or may hereafter be, established, and chartered by said grand lodge, all organizations known as the subordinate granges to the Nebraska state grange, all organizations known as Good Templars, which have been, or may hereafter be regularly chartered by the respective grand lodges or bodies of the several orders or organizations in the state of Nebraska, and also the organization known as the Grand Army of the Republic, department of Nebraska, together with such posts of said Grand Army of the Republic within this state as have been, or may hereafter be, established and chartered by said department, and all organizations known as subordinate lodges of the order of Bohemian Benevolent Society C. S. P. S., and the Bohemian Roman Catholic Benevolent Society C. R. K. P. J. of Nebraska, and the auxiliary societies of the Woman's Christian Temperance Union, the Brotherhood of St. Andrews, as have been or may hereafter be established, be and they are hereby incorporated, and shall be hereafter entitled to all the privileges and rights incident to **bodies corporate,** so long as they retain their respective organizations and charters aforesaid.

Amended and other societies added 1885, p. 203; 1889, p. 403; 1891, p. 218.

668. All subordinate lodges of Masons, Odd Fellows, Knights of Pythias, Good Templars, and all subordinate granges, the Farmers' Alliance, and Knights of Labor, all posts of the Grand Army of the Republic, and Bohemian Benevolent

Association C. S. P. S., the Bohemian Roman Catholic Benevolent Society C. R. K. P. J., and Woman's Christian Temperance Union, the Brotherhood of St. Andrews, shall be known by the **name and title** designated in their several respective charters, as issued by the said grand lodges, department, or organization, by which name they shall be capable of suing and being sued, pleading and being impleaded, in the several courts of this state the same as natural persons, and shall have **power** to hold and convey real estate and personal property, and do all things usually done by corporations.

Amended 1885, p. 204; 1889, p. 404; 1891, p. 218.

669. Nothing herein contained shall be so **construed** as to affect the incorporation of lodges or other organizations heretofore incorporated by act of the legislature.

This section added 1885, p. 204.

Educational Institutions.

Secs. 670 to 683 formed secs. 15 to 28, ch. 25, R. S. 1866.

670. Any number of persons, not less than five, desiring to establish a college, university, normal school, or other **institution** for the purpose of promoting education, religion, morality, agriculture, or the fine arts, may, by complying with the provisions of this subdivision, **become** a **body corporate** and politic with perpetual succession, and may assume a corporate name by which they may sue and be sued, plead and be impleaded in all courts of law and equity; may have a corporate, seal, and the same alter and break at pleasure; may hold all kinds of estate, real personal, or mixed, which they may acquire by purchase, donation, devise, or otherwise, necessary to accomplish the objects of the incorporation, and the same to dispose of and convey at pleasure.

671. To ascertain the **property** and value thereof of any institution desirous of becoming a body corporate, under the provisions of this subdivision, it shall be the duty of the probate judge of any county of this state, on application, in writing, of any number of persons not less than five, of whom not less than five shall be resident freeholders of the county where such application is made, or where such institution is or is intended to be located, setting forth the objects for which they desire to become incorporated, to select three disinterested freeholders of the county, and voters therein, as appraisers, who shall first take an oath for the faithful discharge of their duties, before some competent officer, and such appraisers shall then proceed to make a schedule, and upon actual view to appraise the true value, in money, of all such goods, chattels, lands, and tenements, choses in action, rights, credits, and subscriptions, as such applicants shall exhibit to such appraisers, and shall return such schedule with their **appraisement**, and certificate of some officer authorized to administer oaths, that such appraisers were first duly sworn by him to discharge their duties as such appraisers, to the probate judge of the proper county; and if the amount so found shall be equal to the sum required for the commencement of any such institution as said applicants desire, such probate judge shall give such applicants a certificate of the fact, and they shall enter it in a book of records, by them provided for that purpose, which certificate, together with the corporate name and the articles of association, they shall also cause to be recorded in the county clerk's office of the county where such institution is or is intended to be located, and they shall thenceforward be a body corporate and politic, according to the provisions of this subdivision, and such probate judge, appraisers, and county clerk shall be entitled to the same fees as for like services in other cases, and no more.

672. The corporators of any college or university which may be organized in

accordance with the provisions of this subdivison may elect five or more **trustees**, of whom not less than five shall be resident freeholders of the county where such college or university is located, who shall constitute a board of directors for such institution, and they shall have power to fill vacancies that may occur in their board, and shall hold their offices until their successors are elected and qualified according to the rules and by-laws that may be adopted by the board of trustees, but at all times at least five of such board of trustees shall be residents, freeholders of the county where such institution is located; and when any such board, in their corporate name, shall have acquired for the benefit of such institution five thousand dollars, in real and personal property, to be ascertained as herein provided, said trustees shall have power to appoint a president, professors, tutors, and teachers, and any other necessary agents and officers, and fix the compensation of each, and may enact such by-laws, not inconsistent with the laws of this state or of the United States, for the government of the institution and for conducting the affairs of the corporation, as they may deem necessary, and shall have power to confer, on the recommendation of the faculty, all such degrees and honors as are conferred by colleges and universities of the United States, and such others having reference to the course of study and the accomplishment of the student, as they may deem proper.

673. In case it should happen that an **election** for directors should not be held on the day appointed by the by-laws of any institution or company formed under the provisions of this subdivision, such corporation shall not, for that reason, be deemed to be dissolved, but it shall be lawful on any other day to hold a meeting and elect its directors in such manner as shall be prescribed by the by-laws thereof.

674. The **trustees** of any university, college, or academy may **hold** in trust any **property** devised, bequeathed, or donated to such institution, upon any specific trust, consistent with the object of said corporation.

675. The president and professors shall constitute the **faculty** of any literary college or university instituted under the provisions of this subdivision, and have power to enforce the rules and regulations enacted by the trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary.

676. When any number of persons shall have procured by subscription, donation, devise, purchase, or otherwise, the sum of five hundred dollars, for the purpose of establishing and sustaining an **academy**, such persons may adopt a corporate name and enter the same in the county clerk's office of the proper county, and proceed to the election of such officers and teachers as they may deem necessary; may, in their corporate name, sue and be sued, plead and be impleaded, in any court of law or equity of competent jurisdiction, and may have a corporate seal, may purchase and hold personal or real estate, and dispose of the same at pleasure, and do all other acts and things necessary for the promotion of education and the general interests of such academy.

Amended 1871, p. 105.

677. Any college, university, or academy now instituted may come under the provisions of this subdivision by complying with the requisitions herein contained, and all such institutions now in existence, or that may hereafter be established, may connect therewith, to be used as a part of their course of education, and **mechanical** shops, or machinery, **or** lands for **agricultural purposes**, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical or agricultural purposes of such institutions.

678. Any company which may be formed in pursuance of this subdivision, or which may now exist by virtue of any special act of incorporation, the property of

which is held as stock, and not derived by donation, gift, devise, or gratuitous subscriptions, may increase its capital stock or change it into scholarships, when it becomes necessary for the purpose of carrying out the object for which such company or corporation is formed, in the following manner: The directors for the time being shall make out and sign a certificate, in which they shall set forth the amount to which such capital stock is to be increased, and the object, which certificate shall be deposited in the office of the county clerk of the proper county, and be by him recorded in the same manner as the articles of association and corporate name are required by this subdivision to be recorded.

679. Before the capital stock of such company shall be increased it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper of general circulation in the county in which such institution is located, at least four consecutive weeks, appointing a time and place for holding a meeting of the stockholders of the said company, specifying the amount to which it is proposed to increase the capital stock thereof; and a vote of at least two-thirds of the shares of the stock represented at such meeting shall be necessary to an increase of its capital stock, and to authorize the directors to make and sign the certificate mentioned in the preceding section.

680. Any university, college, or academy that may become a body corporate under the provisions of this subdivision, the property of which is not derived by donation, gift, devise, or subscription, but is owned by individuals in the shape of stock subscribed or taken, the owners of said stock shall be individually liable for the debts of said corporation to the amount of their stock respectively, and also in a sum equal thereto, over and above the amount of their stock; *Provided,* That the trustees or directors of any corporation organized under the provisions of this subdivision, the property of which is not owned by individuals in the shape of stock subscribed or taken, but is held upon trust or derived by devise, donation, gift, or subscription, shall not contract any indebtedness beyond the actual means or assets of said corporation; and if said trustees or directors contract debts or incur liabilities beyond the actual means or assets of said corporation, the trustees or directors so contracting shall be held liable in their individual capacity for the payment of the same, but the property of said corporation shall first be exhausted.

681. Whenever three or more persons shall desire to create a board of trustees, to become incorporated as the trustees of an endowment fund for any educational, religious, or charitable purpose, they shall do so in the following manner, to-wit: Whenever, at any meeting called for the purpose, the said persons, at least three of whom shall be residents of this state, not less than three in number, as aforesaid, shall resolve to become a party corporate and politic, having a seal and corporate name, whereby they may sue and be sued in courts of justice in this state, they shall prepare a statement, setting forth the name by which they shall be called, the amount of said fund, and the manner in which and the district to which the said fund shall be applied, whether within or without this state, together with the names of the persons who shall act as trustees, which said statement shall be subscribed by all the persons composing said meeting, in the presence of some magistrate or judicial officer having a seal, who shall attest the signing of the same, and the same shall be recorded in the office of the county clerk in the county where said meeting was held, and thereupon the persons named in said statement as trustees, and their successors in office, shall become a body corporate and politic for the purposes in said statement named and specified; and a certified copy of said record, under the hand and seal of the county clerk of said county, shall at all times be *prima facie* evidence of the existence of said corporation.

Amended 1871, p. 105.

682. In any case where, in the original statement in the preceding section provided for, it is contemplated that the **fund** may be **applied** to any **object** not inconsistent with the purposes of education, *religion, or charity,* **different** from that parteicularly specified in said statement, the trustees above named, or their successors in office, may apply to the district court in the county where the record hereinbefore provided for was made, for the privilege to make such change, designating particularly the purposes to which it is proposed to apply the same; and the said court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of said fund, shall authorize and sanction such change.

* to * added 1871, p. 106.

683. The said board of **trustees** and their successors in office shall be a **body politic** with perpetual succession, and they shall hold their offices for such terms and receive their appointments in such manner as shall be designated in the statement on record in the office of the county clerk, as hereinbefore provided.

Secs. 684 to 686. "An act to provide for the **incorporation of universities** under certain circumstances. 1879, p. 189. In force June 1.

684. Whenever any person or persons shall have become possessed of funds, securities, and property of the value of one hundred thousand dollars or more, for the purpose of an institution of learning of the rank and grade of a college or university, it shall be competent for him or them to present to the judge of the district court of the county in which such institution is, or is proposed to be, situated, a **petition** setting forth the fact, and such circumstances as may be pertinent, praying the appointment of one or more commissioners to examine into the truth thereof; and thereupon it shall be the duty of the said judge to appoint a commissioner or **commissioners** for the purpose aforesaid. The person or persons so appointed shall be, by said judge, sworn to full inquiry and true report make of the matters given to him or them in charge, and the said oath, duly subscribed by the parties and certified by the said judge, shall be filed in the office of the clerk of said county. The said commissioner or commissioners shall thereupon personally examine the property, funds, and securities alleged to be set apart for the purpose aforesaid, and shall appraise the same and report the facts thus ascertained to the said judge. If, from the said report, it shall appear to the said judge that the sum of one hundred thousand dollars in property, funds, and securities of that value have been set apart for the purpose aforesaid, so as to be irrevocably and inviolably appropriate[d] thereto, the said judge shall endorse the said report with an order approving the same, and directing that the same be filed in the office of the said county clerk, together with the petition aforesaid, and other papers presented to him in the same matter, which petition, report, order, and papers shall be recorded by the said clerk in the book of incorporations to be kept in his office.

685. Whereupon the person or persons possessed of the said funds, securities, and properties may, under his or their hands, appoint five or more persons to be **trustees** of the said institution, who shall thereupon become a body politic and corporate under a name and style to be named, designated, and appointed for the purpose by the aforesaid person or persons in the said writing, appointing the said trustees, which paper writing of appointment shall be filed and recorded in the book of incorporations in the office of the said county clerk, and the said trustees, under the name and style so named, designated, and appointed, may sue and be sued, plead and be impleaded, in all courts of law and equity; have a common seal, and the same alter, break, and renew at pleasure, and hold all kinds of estate, real and personal, and mixed, which they may acquire by purchase, donation, devise, or other-

wise, necessary to accomplish the purpose of the corporation, and the same to dispose of and convey at pleasure. And a certified copy of the said paper writing appointing said trustees, and naming, designating, and appointing the name and style of such corporation, shall be *prima facie* evidence in all courts, and before all officers, boards, commissioners, and tribunals of the due incorporation of such body politic and corporate.

686. The said board of **trustees** shall have **power** to fill all vacancies in their number, to make rules, regulations, and by-laws for the government of their board, and of the institution; to appoint a president, professors, tutors, and teachers, and any other necessary officers and agents, and fix the compensation of each; to erect within and as departments of said institution, such schools and colleges of the arts and sciences and professions as to them may seem proper, and to confer such academic degrees and honors as are conferred by colleges and universities of the United States.

Secs. 687 and 688. "An act authorizing the trustees of any **educational institution** in Nebraska to **change** the **name** and grade of such institution, and legalizing the action of their official successors." 1885, p. 197. In force February 10.

687. That the **trustees** of any incorporated educational institution in this state shall have the power, by and with the consent of the body or association by which such trustees are elected, to **change** the **name** and grade of such institution; and thereupon all the property of such institution shall pass into the hands and control of the trustees of the succeeding institution, together with all the rights, privileges, immunities, and franchises belonging to the originally incorporated institution; and all official action taken by the trustees of such succeeding institution of altered grade shall be and are hereby declared legal and binding.

688. Any **action** heretofore **taken** by any educational institution in this state, of a nature similar to the provisions contained in section one of this act, is hereby **legalized** and declared valid and binding upon all persons whatsoever.

Secs. 689 and 690. "An act to provide for the **reorganizing,** under the general laws of **incorporations,** of all incorporations heretofore formed under special acts." 1871, p. 106. In force March 17.

689. The **Nebaska University,** an incorporation formed under a special act of the legislature of the territory of Nebraska, approved July 25, 1858, and amended by an act approved October 25, 1858, and all other incorporations formed under the special acts of the legislature of the territory of Nebraska, previous to the approval of the general incorporation law, may be and are hereby empowered through their trustees to reorganize under the general incorporation law of this state.

690. The trustees of **any incorporation reorganized** according to section one of this act shall be and are hereby empowered to act as successors of such former trustees, and to have and to hold and to take legal possession of all franchises, rights, privileges, and estates of said special incorporation against all persons whatsoever, and for the interest and purposes of the original incorporation, and for no other purposes whatever.

Religious Societies, Etc.

Secs. 691 to 695. "An act for the incorporation of churches, parishes, and **religious societies.**" 1883, p. 177. In force June 1.

691. Churches, parishes, and societies of all religious bodies, sects, and denominations in this state having a central governing body with spiritual jurisdiction extending over the whole state, or a part thereof, being more than six counties, may become **incorporated** by complying with the terms and provisions of this act.

Church organization may make rules for government of members. If they have no rules, those of the common law prevail, and a member cannot be expelled without notice. **28,** 495 (44 N. W., 658).

692. The chief or presiding or executive officer of the religious bodies, sects, and denominations mentioned in the first section of this act may, at such place in this state as he may appoint for the purpose, **convene** a meeting of himself and some other officer subordinate to himself, but having general jurisdiction throughout the state or part of the state aforesaid, and the priest, minister, or clergyman of the proposed church, parish, or society, and at least two laymen resident within the limits thereof, of which meeting the said chief or presiding or executive officer shall be president, and one of the other persons present shall be secretary.

693. The said five persons being so convened and organized as a meeting shall adopt **articles of incorporation,** which shall fix: 1. The name of the church, parish, or society, and the place of its location. 2. The amount of debts which it shall be competent to contract, beyond which amount the corporation have no power to contract debts binding at law or in equity upon it, its members, or its property. 3. The manner in which it may contract and become bound for debts, and may convey, incumber, or charge its property. 4. The manner in which the succession of the members of the said corporation shall be regulated, and vacancies in their number filled. 5. The time of the commencement and termination of the corporation. 6. By what officers its affairs may be conducted. Which articles being subscribed and acknowledged by the persons present at the meeting, and recorded in the office of the county clerk of the county where such church, parish, or society shall be located, whereupon such corporation shall be competent to transact all business in and by its corporate name.

694. The persons attending said meeting shall be the **corporators** and members of the corporation until their places may be supplied by and under the provisions of the articles of incorporation.

695. Corporations organized under the provisions of this act shall be subject to the **laws** of this state in respect of corporations which are **applicable** to them, save as herein expressly provided.

Secs. 696 to 700 formed secs. 40 to 44, ch. 25, R. S. 1866, p. 204.

696. It shall be lawful for any **religious** sect **or** denomination, fire company, or any literary, scientific, or benevolent association (**other** than colleges, universities, academies, or seminaries) within this state to elect at a meeting of a majority of the members of any organized church, fire company, literary, scientific, or benevolent **association** as aforesaid, called for that purpose, any number of their members, not less than three, to serve as **trustees** or directors, and one member as clerk, who shall hold their offices during the pleasure of the society or association; **Provided,* That all religious bodies that have in their articles of association, constitution, by-laws or discipline, provisions for the election of trustees or directors to hold property for the use and benefit of the membership and ministry thereof, may and are hereby authorized to elect such trustees or directors according to such provisions, and that a certificate of such election, signed by the president and clerk of such meeting or conference, shall be placed upon the records of the county in which said property may be situated; *And provided further,* That this act shall also include and apply to, and provide for, the incorporation of any synod, conference, association, diocese, presbytery, or any other ecclesiastical body or court of any religious sect or denomination, comprising or extending over the whole state or any part thereof, and in every such case in which such body to be incorporated shall comprise or extend over more than one county in this state, the certificate of election of the trustees or directors shall also be filed in the office of the secretary of state and there recorded.

Amended and all after * added 1889, p. 487.

697. That the clerk so elected shall make a true record of the **proceedings** of such meeting provided for in this subdivision, so far as the same pertains to the organization of the body and the election of such trustees or directors, and certify and deliver a true copy of the same to the clerk of the county where such meeting shall be held, if said body shall not comprise or extend over more than such county, together with the name by which such church, fire company, association, or body shall thereafter desire to be known; and it shall be the duty of such county clerk, immediately upon the receipt of such certified statement, to **record** the same in a book of record to be kept by him, provided for that purpose at the expense of his county, for which service he may demand the sum of ten cents per hundred words; and in case said body shall comprise and extend over more than one county, then such clerk shall deliver such certified copy of said proceedings and such name to the secretary of state of this state, who shall in like manner file and record the same in his office in a book provided for such purposes at the expense of the state; and from and after the making of such record by the county clerk or the secretary of state, as the case may be, the said trustees or directors and their associated members, as such body, company, church, association, synod, conference, presbytery, diocese, or other court, and their successors, shall be invested with the powers, privileges, and immunities incident to aggregate corporations, and a certified transcript of the record herein authorized to be made by county clerk or secretary of state shall be deemed and taken in all courts and places whatsoever in this state as *prima facie* evidence of the existence of such corporation.

Rewritten 1889, p. 488.

698. The **trustees** or directors who may be appointed under the provisions of this subdivision, and their successors in office, shall have perpetual succession by such name as may be designated, and by such name may be legally capable of contracting and prosecuting and defending suits, and shall have capacity to acquire, hold, enjoy, dispose of, and convey all property, real and personal, which they may acquire by purchase, donation, or otherwise, for the purpose of carrying out the intentions of such society or association, but they shall not acquire or hold property for any other purpose.

699. Such society or association, when incorporated, may elect such **officers** and make such **rules** and regulations as may be necessary and expedient for its own government and the management of its fiscal and other affairs to effect their respective objects.

700. If said board of trustees or directors, as is provided for in this subdivision, shall be vacated, either in whole or in part, by death, resignation, or otherwise, such board of trustees or directors may be revived, or such **vacancy** or vacancies filled, in the manner pointed out in this subdivision for the original organization of said board, and a majority of said trustees or directors shall be a quorum for the transaction of business.

Secs. 701 to 703. "An act authorizing churches, **religious and charitable associations** to **change** their **names** and declaring the effect thereof." 1887, p. 341. In force July 1.

701. That any church, religious or charitable association or corporation existing now, or hereafter coming into existence, by virtue of any special charter from the legislature of this state or of the territory of Nebraska, or by virtue of the General Statutes of the state, may and hereby **is authorized** to change its name at any regular annual meeting of said association by a two-thirds affirmative vote of the members present at said meeting.

702. Public **notice** of such action by said church or association shall be given by publishing the same in some newspaper in general circulation in the county

where said church or association is located for three weeks successively next after said meeting, and by recording the minutes of said meeting in the same place as articles of incorporation are now by law required to be recorded.

703. The **change** of the name of any church or religious or charitable association under this act shall **not** in any manner **impair** the **right,** title, or interest in or to any property held by said association whose name becomes changed, and any incumbrance or liability created before said change shall remain unimpaired thereby.

Sec. 704 formed sec. 60, ch. 25, R. S. 1866, p. 210.

704. When any real estate shall have been or may hereafter be bequeathed, aliened, donated, or otherwise entrusted to any **religious society** in this state, or to any of the trustees or officers of any such society, and such society shall be desirous to sell, exchange, or incumber, by mortgage or otherwise, any such **real estate,** it shall be lawful for the district court of the proper county, upon good cause shown upon petition of any such society, or some person authorized by them, to make an order authorizing the **sale** or incumbrance of any such real estate, and said court may include in such order directions how the proceeds of such sale or incumbrance shall be appropriated or invested; *Provided,* Such order shall in no case be inconsistent with the original terms upon which such real estate became invested or entrusted to such religious society.

Sale may be enjoined by contributors to building fund where latter would be diverted from intended use. **27,** 397-8 (43 N. W., 174).

Miscellaneous.

Secs. 705 to 707. "An act to enable associations of persons of the **learned professions** to become bodies corporate." 1877, p. 119. In force June 1.

705. All associations of **members** of the **professions** of law, medicine, or divinity now existing, or which may hereafter be formed, may become **incorporated** and have all the powers, rights, duties, and liabilities of corporations for the attainment of their respective objects, by filing in the office of the secretary of state a copy of their constitution and by-laws duly attested by their president or presiding officer and countersigned by their secretary.

706. All such associations shall upon their organization elect an **executive council** of not less than three nor more than six persons, who, together with the president and secretary of such association, shall constitute the trustees or directors, and perform the duties and have the powers defined in sections forty-two and forty-four of chapter eleven, entitled "Corporations" [698 and 700].

707. Such associations may have and use a **seal** with such devices as may be proper, and change the same at pleasure.

Secs. 708 to 716. "An act to authorize the incorporation of **detective associations,** to provide for bonds of collection and awards by, to prescribe their powers, duties, and liabilities, prevent frauds by, and punish false pretenders." 1885, p. 189. In force March 5.

708. Whenever any number of persons associate themselves together for the purpose of carrying on the detective or **secret service** business for pay, they shall make a certificate in writing, subscribed and verified by the oaths or affirmations of all the members thereof, showing the full name and place of residence of each, the name and style by which such association shall be called, and the name of the town and county where their principal office shall be located, which certificate shall be filed in the office of the secretary of state, to be by him preserved and recorded in his office in the manner hereinafter provided.

709. Within thirty days from the date of filing the certificate as provided in

section one of this act [708], the **members** of such association shall execute and deliver to the secretary of state a **bond** for the state of Nebraska in the penal sum of ten thousand (10,000) dollars, signed by all the members of such association, with a number of sureties equal to two for each member of said association, which sureties shall severally justify in sums aggregating the sum of ten thousand (10,000) dollars as hereinafter provided, conditioned for the faithful performance by such association of all the duties of their employment as prescribed in this act, and each member of such association shall make an **oath** or affirmation, to be endorsed on such bond and subscribed by him before some officer authorized to administer oaths and by him certified thereon, that he will support the constitution of the United States, and the constitution of the state of Nebraska, and will faithfully and impartially discharge the duties of a detective as prescribed in this act. Upon the receipt of such bond by the secretary of state he shall file the same, to be preserved in his office, and shall certify in writing that such association has complied with the law authorizing the incorporation of detective associations, and affix thereto the great seal of the state of Nebraska, attest the same, and record such certificate, together with the certificate and bond filed by such association, in a book to be kept for the purpose, and shall within five days thereafter, deliver said **certificate** issued by him to some member of said association, or mail the same, properly sealed, stamped, and addressed, to said association at the town where their principal office is located, and upon receipt of such certificate it shall be the duty of such association, before transacting any business, other than to meet for such purpose, to elect a chief and secretary, who shall continue in office until their successors are elected and qualified.

710. The **justification of sureties** on the bond required by section two of this act shall be an oath or affirmation endorsed on such bond to the effect that each of said sureties is a resident and freeholder of the state of Nebraska and is worth at least the sum in which he justifies, over and above all debts and liabilities by him owing, and all property exempt by law from levy and sale on execution, which oaths or affirmations shall be subscribed by the sureties and taken before and certified to by some officer authorized to administer oaths.

711. When any detective association shall be incorporated under the provisions of the three preceding sections of this act, such association is authorized to engage in the secret service or detective business through and in the name of such association, and shall be deemed a **body corporate limited,** without successors, and they may sue and be sued, plead and be impleaded, in all courts of law and equity in and by their corporate name, and may have a corporate **seal** and may alter the same at will, and may acquire and **hold** such **property** as they may deem expedient or necessary, whether it be real, personal, or mixed, for the uses and purposes of their employment as defined in this act, and may employ any number of persons to assist them, but it shall be the duty of such association to deliver to every person employed by them a certificate showing the date of their employment, the name of the association, and the time for which such person is employed, which certificate shall be signed by the chief and attested by the secretary of such association; *Provided, however,* That whenever any person shall be admitted to such association as a member and not an employee, such association shall file a new certificate and bond in the office of the secretary of state, and at the expiration of every five years from the date of the last certificate issued to such association they shall make and file in the office of the secretary of state **new bond** and **certificate,** and in either case such new certificate and bond shall be in all respects the same as that required by the first three sections of this act and verified and recorded in the same manner.

712. It shall be the **duty** of the members and employes of every detective association incorporated under the provisions of this act, to preserve inviolate all **secrets** of state which may come to their knowledge, and all secrets confided to them in the course of their employment, unless required in the furtherance of justice to divulge the same in courts of examination, trial, or impeachment, to aid executive, judicial, and police officers in preventing crime, the pursuit, identification, arrest, and conviction of secret offenders and fugitives from justice, and to report to the chief any information or threatened insurrection against the state which may come to their knowledge, which chief shall forthwith convey such information to the governor, and upon the request of any magistrate within the county where the principal office of such association shall be located, it shall be the duty of such members thereof to **execute** all **writs** issued by such magistrate upon information against any person prosecuted by the state of Nebraska, for any offense punishable by fine, imprisonment, or death.

713. When any magistrate shall require a member of any detective association incorporated under the provisions of this act to **execute** any **writ** as provided in section five [712], it shall be the duty of such magistrate to direct such writ to the chief of such association, and the **return** thereon shall be verified in the same manner as provided by law for returns of such writs by sheriffs, and shall be signed by the chief's name and the name of the association, and if served by any other member than the chief, he shall add to the name of the chief and the association his name as associate, and such return shall be entitled to the same credit as returns by sheriffs, and when actually engaged in such service the members of such association shall have the same authority given by law to sheriffs in discharge of like duties, and such association shall be entitled to the same fees and mileage, to be taxed and collected in the same manner as provided by law for the payment of fees to sheriffs.

714. The **members** of every detective association incorporated under the provisions of this act, and their sureties, shall be **liable** on the bond of such association in damages to the party injured for loss of or damages to any money, property, or thing of value which may come into their possession, or the possession of their employes, in the course of their employment, and for the escape of any prisoner in their charge, if such loss, damage, or escape is caused by the negligence or misconduct of any member or employe of such association, which damages may be recovered in any court of competent jurisdiction in the county where the principal office is located, according to their certificate on file in the office of the secretary of state; *Provided*, That such association may have a lien on any stolen money or property recovered by them for the amount of the reward publicly offered or agreed in writing to be paid, and may refuse to deliver such money or property to the person offering such reward until the payment of the same be made.

715. Any detective **association** incorporated under the provisions of this act may be **dissolved** by two-thirds of the living members thereof making and filing in the office of the secretary of state a certificate showing the names of all the members, the date of their incorporation, and the name of the association, the names of any member who may be dead or has absconded or severed his connection with the association, declaring it their intention to dissolve such corporation at a time to be named in such certificate, which time shall not be less than forty days after the first publication of such certificate in the manner hereinafter provided; such certificate shall be subscribed and verified by the oaths or affirmations of two-thirds of the living members of such association and published four consecutive weeks in some newspaper printed and of general circulation in the county where their principal office is located, and if no such paper be printed in said county, then in some

paper printed and of general circulation in the county where the capital of the state is located; *Provided, however,* That a failure for more than thirty days after the association of a new member, or the expiration of five years, to file a new certificate and bond as provided in section four of this act shall work a dissolution of such corporation, and upon the dissolution by operation of law or action of the members of such association, all the property and effects of every nature belonging to such association shall descend to and be vested in the members thereof jointly.

716. Any person who shall in the name of, or by virtue of, their association with or employment by any detective association incorporated under the provisions of this act engage in the secret service for pay, or offer to any other person their services as a detective, without having first complied with the requirements of the first three sections or having received a certificate of their employment, as provided in section four of this act [711], shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty ($50) dollars or imprisoned in the county jail not to exceed thirty days, and any person who shall, by means of such false and **fraudulent** pretended **association** with or employment by any detective association, incorporated under the provisions of this act, obtain from any other person any goods, merchandise, money, property, effects, or other thing of value, if the property or money so fraudulently obtained be the value of thirty-five ($35) dollars or upwards, such person so offending shall be imprisoned in the penitentiary not more than five years nor less than one year; but if the value of the property be less than thirty-five ($35) dollars, the person so offending shall be fined in any sum not exceeding one hundred dollars or be imprisoned in the county jail not exceeding sixty days, and be liable to the party injured for the damages sustained.

CEMETERY ASSOCIATIONS.

Secs. 717 to 725 formed secs. 45 to 53, ch. 25, R. S. 1866, p. 205.

717. It shall be lawful for any number of persons, not less than five, who are residents of the county in which they desire to form themselves into an association, to form themselves into a **cemetery association,** and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society; all such elections shall take place at a meeting of a majority of the members of such association, and after notice for at least twenty days in a newspaper, or by posting at least three written notices at public places in the township.

718. The **clerk**, hereinbefore authorized to be appointed, shall forthwith **make** out a true **record of** the proceedings of the **meeting** provided for by the preceding section, and certify and deliver the same to the clerk of the county in which such meeting shall be held, together with the name by which such association shall desire to be known; and it shall be the duty of each county clerk in this state, immediately upon the receipt of such certified statement, to **record** the same in a book by him provided for that purpose, at the expense of the county; and the clerk shall be entitled to the same fees for his services as he is entitled to demand for other similar services; and from and after the making of such record by the county clerk, the said trustees, and their associated members and successors, shall be invested with the powers, privileges, and immunities incident to aggregate corporations; and a certified transcript of the record, herein authorized to be made by the county clerk, shall be deemed and taken in all courts and places whatsoever within this state as *prima facie* evidence of the existence of such cemetery association.

719. The **trustees** who may be appointed under the provisions of this subdivision shall have perpetual **succession,** and shall be capable in law of contract-

ing, and prosecuting and defending suits at law and in equity; and, where suits shall be brought against said incorporation, *mesne* process against it may be served by leaving an attested copy thereof with one of the trustees, at least ten days before the return day thereof.

720. Such **association** may have **power** to prescribe the terms on which members may be admitted, the number of its trustees and other officers (subject to the limitations set forth in this subdivision), and the time and manner of their election and appointment, and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association, not inconsistent with this or any other statute of the state, nor in violation of the constitution.

721. Such association shall be authorized to purchase or take, by gift or devise, and **hold lands exempt** from execution and from any appropriation to public purchasers, for the sole purpose of a cemetery, not exceeding three hundred and twenty (320) acres, which shall be exempt from taxation if used exclusively for burial purposes, and in nowise with a view to profit. After paying for such land, all the future receipts and **income** of such association, whether from the sale of lots, from donations, or otherwise, shall be **applied** exclusively to buying out, protecting, preserving, and embellishing the cemetery and the avenues leading thereto, and to the erection of such building or buildings, vault or vaults, as may be necessary for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in the anticipation of future receipts, except for originally purchasing, laying out, inclosing, and embellishing the grounds and avenues, and erecting buildings and vaults, for which a debt or debts may be contracted, not exceeding thirty-five thousand ($35,000) dollars in the whole, to be paid out of future receipts; and such association shall have power to adopt such rules and regulations as they deem expedient for disposing of and conveying burial lots.

Amended 1885, p. 181.

722. **Burial lots** sold by such association shall be for the sole purpose of interments, and shall be subject to the rules prescribed by the association, and shall be **exempt** from taxation, execution, attachment, or any other claim, lien, or process whatever, if used exclusively for burial purposes, and in nowise with a view to profit.

723. Such association shall cause a **plat of** their **grounds**, and of the lots by them laid out, to be made and recorded, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve, and adorn the grounds and avenues, and erect buildings for the use of the association; and to prescribe rules for the enclosing and adorning lots, and for erecting monuments in the cemetery; and to prohibit any use, division, improvement, or adornment of a lot which they may deem improper, and an annual exhibit shall be made of the affairs of the association.

724. Any person who shall willfully **destroy**, mutilate, deface, **injure**, or remove any **tomb**, monument, or gravestone, or other structure placed in any cemetery, or any fence, railing, or other work for the protection or ornament of a cemetery, or tomb, monument, or gravestone, or other structure aforesaid, or of any cemetery lot within a cemetery, or shall willfully destroy, cut, break, or injure any tree, shrub, or plant, within the limits of a cemetery, shall be deemed guilty of a **misdemeanor**, and shall, upon conviction thereof before any court of competent jurisdiction, be punished by a fine of not less than five dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than one day nor more than thirty days, according to the nature and aggravation of the

offense; and such offender shall also be liable, in an action of trespass in the name of the association, to pay all such damages as have been occasioned by his unlawful act or acts, which money, when recovered, shall be applied to the reparation and restoration of the property destroyed or injured as above; and in all prosecutions and suits under this chapter members of said association shall be competent witnesses.

725. Lands appropriated and set apart as **burial grounds**, either for public or private use, and so recorded in the county clerk's office of the county where such lands are situated, shall **not** be **subject to sale** on execution on any judgment to be hereafter recovered, to taxation, to dower, nor to compulsory partition.

CHAPTER 10.—COUNTIES.

An act defining the boundaries in certain counties. In force March 3, 1873. G. S., 212. (Sections are given as in original act unless otherwise indicated.)

726. That the counties hereinafter named shall be bounded by boundary lines as set forth in this act.

727. The county of **Adams** is bounded as follows: Commencing at the southwest corner of township five north, of range twelve west; thence east to the southeast corner of township five north, of range nine west; thence north to the northeast corner of township eight north, of range nine west; thence west to the northwest corner of township eight north, of range twelve west; thence south to the place of beginning.

728. The county of **Antelope** is bounded as follows: Commencing at the southwest corner of township twenty-three north, of range eight west; thence east to the southeast corner of township twenty-three north, of range five west; thence north to the northeast corner of township twenty-eight north, of range five west; thence west to the northwest corner of township twenty-eight north, of range eight west; thence south to the place of beginning.

729. [**Arthur.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township seventeen (17) north, of range thirty-six (36) west of the sixth principal meridian; thence north to the northeast corner of township twenty (20) north, of range thirty-six (36) west; thence west along said township line to the east line of Cheyenne county; thence south along the east line of Cheyenne county to the north line of Keith county; thence east along the north line of Keith county to the place of beginning, be and the same shall constitute the county of Arthur.

1887, p. 344.

730. The county of **Banner** is bounded as follows: Commencing at the southeast corner of section thirty-six, in township seventeen north, of range fifty-three west of the sixth principal meridian; thence due north on the range line between range fifty-two and range fifty-three, to the northeast corner of section twenty-four, township twenty north, range fifty-three west; thence due west on the section line to the point where said section line intersects the east line of the territory of Wyoming; thence south along the west line of the state of Nebraska to a point where said state line intersects the township line between townships sixteen and seventeen north, of range fifty-eight west; thence due east on said township line to the place of beginning.

Formed from Cheyenne county by vote November 6, 1888.

731. [**Blaine.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township twenty-one (21), range twenty-one (21), running thence north to the northeast corner of township twenty-four (24), range twenty-one (21), township twenty-four (24); thence west to the northwest corner of township twenty-four (24), range twenty-five (25); thence south to the southwest corner of township twenty-one (21), range twenty-five (25); thence east to the southeast corner of township twenty-one (21), range twenty-one (21), to the place of beginning; that the territory within said boundary may be set apart and hereafter known as Blaine county, subject to the organization as such at the will of her people at some future time.

1885, p. 205.

732. The county of **Boone** is bounded as follows: Commencing at the southwest corner of township eighteen north, of range eight west; thence east along the northern boundary of the Pawnee reservation, to a point where the dividing line between ranges four and five west intersect the same; thence north to the northeast corner of township twenty-two north, of range five west; thence west to the northwest corner of township twenty-two north, of range eight west; thence south to the place of beginning.

733. The county of **Box Butte** is bounded as follows: Commencing at the southeast corner of township 24 north, range 47 west; thence north to the northeast corner of township 28 north, range 47 west; thence west to the northwest corner of township 28 north, range 52 west; thence south to the southwest corner of township 24 north, range 52 west; thence east to the place of beginning.

Formed from Dawes county by vote November 2, 1886.

734. That the unorganized territory lying north of Holt county and in the state of Nebraska be organized into a new county to be known as the county of Boyd.

735. The county of **Boyd** shall be bounded as follows: Commencing at a point in the middle of the main channel of the Niobrara river intersected by the range line between eight (8) and nine (9) west; thence north on said range line to the middle of the main channel of the Missouri river; thence up to the main channel of said river to a point intersected by forty-third (43) north parallel. Thence west on said parallel to a point intersected by the range line between sixteen (16) and seventeen (17); thence south on said line to a point in the middle of the main channel of the Niobrara river; thence down the main channel of said river to the place of beginning.

1891, p. 224.

736. [**Brown.**]—That all of that portion of the state of Nebraska commencing at the southeast corner of township twenty-five (25) north, of range seventeen (17) west of the sixth principal meridian; thence west to the southwest corner of township twenty-five (25), range twenty-four (24); thence north to the northern boundary of the state; thence east to the range line between ranges sixteen (16) and seventeen (17); thence south to the place of beginning, be and the same shall constitute the county of Brown.

1883, p. 198.

737. [**Burt.**]—That the territory bounded as follows: Commencing at a point where the north line of sections twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), of township twenty-four (24) north, of range ten (10) east of sixth principal meridian, intersects the east boundary line of the state of Nebraska; thence west along said section lines to the northwest corner of said section twenty-one (21); thence south along the west line of said sections twenty-one (21) and twenty-eight (28) to the south boundary line of the Omaha Indian reservation; thence west on the south boundary line of said reservation to the line dividing ranges seven (7) and eight (8) east; thence south by said line to the south line of township twenty-one (21) north, of range eight (8) east; thence east by said line to the northeast corner of section six (6), in township twenty (20) north, of range nine (9) east; thence south by section lines one (1) mile east of the guide meridian to the southwest corner of section twenty (20), in township twenty (20) north, of range nine (9) east; thence east by section lines to the state boundary; thence northwardly up said boundary to the place of beginning, shall constitute the county of Burt.

Amended 1889, p. 72.

738. The county of **Butler** is bounded as follows: Commencing at the south-

east corner of township thirteen north, of range four east; thence north to the south bank of main channel of the Platte river; thence along the south bank of the main channel of the Platte river to the northwest corner of township sixteen north, of range one east; thence south to the southwest corner of township thirteen north, of range one east; thence east to the place of beginning.

Amended 1875, p. 70; 1879, p. 109.

739. The county of **Buffalo** is bounded as follows: Commencing at a point where the dividing line between ranges twelve and thirteen crosses the southern channel of the Platte river; thence up said channel to a point where the dividing line between ranges eighteen and nineteen intersect the same; thence north along said line to the third standard parallel; thence east along said parallel to the northeast corner of township twelve north, of range thirteen west; thence south to the place of beginning.

740. The county of **Cass** is bounded as follows: Commencing at the southwest corner of township ten north, of range nine east; thence east to the middle of the main channel of the Missouri river; thence up said channel until it intersects the Platte river; thence up said Platte river until it intersects the line dividing townships twelve and thirteen north, the last time; thence west to the northwest corner of township twelve north, of range ten east; thence south two miles; thence west six miles; thence south to the place of beginning.

741. The county of **Cedar** is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri river, at which the line dividing ranges one and two west crosses said river; thence south to the southwest corner of township twenty-nine north, of range one west; thence east to the southeast corner of township twenty-nine north, of range one west; thence south to the southeast corner of township twenty-eight north, of range one west; thence east to the southeast corner of township twenty-eight north, of range three east; thence north to the middle of the main channel of the Missouri river; thence up said channel to the place of beginning.

Amended 1875, p. 73.

742. [**Chase.**]—That the following portion of the state of Nebraska, commencing at a point where the first standard parallel intersects the west boundary line of the state of Nebraska; thence east to the southeast corner of township five north, of range thirty-six; thence north to the northeast corner of township eight north, of range thirty-six; thence west to the west boundary line of the state of Nebraska; thence south to the place of beginning, shall hereafter be known as the county of Chase.

1873; G. S., p. 225.

743. [**Cherry.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township twenty-five (25) north, of range twenty-five (25) west of the 6th principal meridian; thence west to the southwest corner of township twenty-five (25) north, of range forty (40); thence north on the east line of Sioux county to the northern boundary line of the state of Nebraska; thence east along said boundary line to the range line between ranges twenty-four (24) and twenty-five (25); thence south on said range line to the point of beginning, be and the same shall constitute the county of Cherry.

1883, p. 199.

744. The county of **Cheyenne** is bounded as follows: Commencing at a point formed by the intersection of the forty-first degree of north latitude with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with

the forty-second degree of north latitude; thence east along said forty-second degree of north latitude to a point formed by the intersection with the twenty-fifth degree of longitude west from Washington; thence south to the northeast county of Colorado territory; thence west to the place of beginning.

745. The county of **Clay** is bounded as follows: Commencing at the southwest corner of township five north, of range eight west; thence east to the southeast corner of township five north, of range five west; thence north to the north corner of township eight north, of range five west; thence west to the northwest corner of township eight north, of range eight west; thence south to place of beginning.

746. The county of **Colfax** is bounded as follows: Commencing at a point where the dividing line between ranges one and two east intersects the south bank of the Platte river; thence along said south bank to a point where the dividing line between ranges four and five east intersects the same; thence north to the northeast corner of township twenty north, of range four east; thence west to the northwest corner of township twenty north, of range two east; thence south to the place of beginning.

747. The county of **Cuming** is bounded as follows: Commencing at the southwest corner of township twenty-one north, of range four east; thence east to the southeast corner of township twenty-one north, of range seven east; thence north to the northeast corner of township twenty-four north, of range seven east; thence west to the northwest corner of township twenty-four north, of range four east; thence south to the place of beginning.

748. [**Custer.**]—That all of that portion of the state of Nebraska commencing at the southeast corner of township thirteen (13) north, of range seventeen (17) west, of the sixth principal meridian; thence north to the northeast corner of township twenty north, of range seventeen (17) west; thence west to the northwest corner of township twenty (20) north, of range twenty-five (25) west; thence south to the southwest corner of township thirteen (13) north, of range twenty-five (25) west; thence east to place of beginning, be and the same shall constitute the county of Custer.

1877, p. 211.

749. [**Dakota.**]—The territory bounded as follows: Commencing at the most westerly point where the township line between townships twenty-nine and thirty north intersects the state boundary; thence west along said line to the northwest corner of section three in township twenty-nine north, of range six east; thence south by section lines to the north line of the Omaha reservation; thence east along said line to the state boundary; thence northwardly by said boundary to the place of beginning, shall be and constitute the county of Dakota.

750. [**Same—Indian Reservation.**]—That all that portion of the Winnebago and Omaha reservations not embraced in the counties of Cuming and Burt be and the same is hereby attached to the county of Dakota for election, judicial, and revenue purposes.

1879, p. 180.

751. [**Dawes.**]—That all that portion of Sioux county of the state of Nebraska commencing at the southeast corner of township twenty-four (24) north, of range forty-seven (47) west, of the sixth principal meridian; thence west to the southwest corner of township twenty-four (24) north, of range fifty-two (52); thence north on the range line between ranges fifty-two (52) and fifty-three (53) to the northern boundary line of the state of Nebraska; thence east along said boundary line to the range line between ranges forty-six (46) and forty-seven (47); thence

south on said range line to the point of beginning, be and the same shall constitute the county of Dawes.

1885, p. 206.

752. The county of **Dawson** is bounded as follows: Commencing at the southwest corner of township nine north, of range twenty-five west; thence east to the center of the south channel of the Platte river; thence down said channel to a point where the dividing line between ranges eighteen and nineteen intersects the same; thence north along said dividing line to the northeast corner of township twelve north, of range nineteen west; thence west to the northwest corner of township twelve north, of range twenty-five west; thence south to the place of beginning.

753. The county of **Deuel** is bounded as follows: Commencing at the southeast corner of Cheyenne county and running thence west along the south line of the state of Nebraska to its intersection with range line between ranges forty-six and forty-seven west of the sixth principal meridian; thence north along said range line to township line between townships twelve and thirteen north; thence east along said township line to section line between sections thirty-two and thirty-three, in township thirteen north, of range forty-six west; thence north on said section line parallel with and two miles east of range line between ranges forty-six and forty-seven west to the north line of Cheyenne county; thence east along the north line of Cheyenne county to the northeast corner thereof; thence south along the east line of said county to the place of beginning.

Formed from Cheyenne by vote November 6, 1888.

754. The county of **Dixon** is bounded as follows: Commencing at the southwest corner of township twenty-seven north, of range four east; thence east to the line dividing sections thirty-three and thirty-four in township twenty-seven north, of range six east; thence north to the dividing line between townships twenty-nine and thirty north, of range six east; thence east to the middle of the main channel of the Missouri river; thence up said channel to a point where the dividing line between ranges three and four east intersects the same; thence south to the place of beginning.

755. [**Dodge.**]—The territory bounded as follows: Commencing at the intersection of the line dividing ranges 4 and 5 east, with the south bank of Platte river; thence easterly along the south bank of the Platte river to the fourth standard parallel; thence east along said parallel to the southeast corner of section thirty-one (31), township seventeen (17) north, range ten (10) east; thence north on section lines three miles to the northeast corner of section nineteen (19), township seventeen (17) north, of range ten (10) east; thence west on section lines two miles to southwest corner of section thirteen (13), township 17, range 9 east; thence north on section lines one mile to northwest corner of section 13, last aforesaid; thence west on section line one mile to southwest corner of section eleven (11), township 17 N., R. 9 east; thence north on section lines one mile to northwest corner of said section eleven (11), last aforesaid; thence west on section lines one mile to the southwest corner of said section three, T. 17, R. 9 E.; thence north on section lines one mile to the northwest corner of said section 3; thence west on section line one mile to north-west corner of section 4, township seventeen, range 9 east; thence north on section line one mile to northeast corner of section thirty-two (32), township 18, R. 9 E.; thence west one-half mile on section line to northwest corner of the northeast quarter of section thirty-two, township 18, R. 9 E.; thence north on half section line two miles to the southeast corner of the southwest quarter of section seventeen, township 18, R. 9 E.; thence west on section line one-half mile

to southwest corner of section seventeen, township 18, R. 9 E.; thence north on section lines fifteen miles to northeast corner of section six, township 20, R. 9 E.; thence west along the fifth standard parallel to the northwest corner of township twenty north, of range five east; thence south by the line dividing ranges four and five east to the place of beginning, shall be and constitute the county of Dodge.

Amended 1875, p. 71.

756. The county of **Douglas** is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri river, two miles south of the dividing line between townships fourteen and fifteen north; thence up said main channel to a point where the fourth standard parallel intersects the same; thence west to a point in the middle of the main channel of the Platte river; thence down said channel to a point two miles due south of the dividing line between townships fourteen and fifteen; thence east to the place of beginning.

757. [**Dundy.**]—That the following portion of the state of Nebraska, commencing at the southwest corner of said state; thence east to the southeast corner of township one north, of range thirty-six; thence north to the northeast corner of township four north, of range thirty-six; thence west to the west boundary line of the state of Nebraska; thence south to the place of beginning, shall hereafter be known as the county of Dundy.

1873; G. S., p. 225.

758. The county of **Franklin** is bounded as follows: Commencing at the southwest corner of township one north, of range sixteen west; thence east to the southeast corner of township one north, of range thirteen west; thence noth to the first standard parallel; thence west to the northwest corner of township four north, of range sixteen west; thence south to the place of beginning.

759. The county of **Fillmore** is bounded as follows: Commencing at the southwest corner of township five north, of range four west; thence east to the southeast corner of township five north, of range one west; thence north to the northeast corner of township eight north, of range one west; thence west to the northwest corner of township eight north, of range four west; thence south to the place of beginning.

760. [**Furnas.**]—That all that portion of the state of Nebraska known and described as townships one, two, three, and four north, of ranges twenty-one, twenty-two, twenty-three, twenty-four, and twenty-five west, shall hereafter be known as the county of Furnas.

1873; G. S., p. 224.

761. The county of **Frontier** is bounded as follows: Commencing at the southwest corner of township five north, of range thirty west; thence east to the southeast corner of township five north, of range twenty-five west; thence north to the northeast corner of township five north, of range twenty-five west; thence east to the southeast corner of township six north, of range twenty-four west; thence north to the northeast corner of township eight north, of range twenty-four west; thence west to the northwest corner of township eight north, of range thirty west; thence south to the place of beginning.

762. The county of **Gage** is bounded as follows: Commencing at the southeast corner of township one north, of range eight east; thence north to the northeast corner of township six north, of range eight east; thence west to the northwest corner of township six north, of range five east; thence south along the township line, dividing townships four and five east, to the southern boundary line of the state; and thence east along the state line to the place of beginning.

763. The county of **Garfield** is bounded as follows: Commencing at the

southeast corner of township numbered twenty-one north, of range thirteen west of the 6th principal meridian; thence north to the northeast corner of township numbered twenty-four in range thirteen west; thence west to the northwest corner of township numbered twenty-four in range sixteen west; thence south to the southwest corner of township numbered twenty-one north, in range sixteen west; thence east to the place of beginning.

Formed from Wheeler county by vote November 8, 1881.

764. *Whereas*, In the constitution of this state in the article on legislative apportionment, and also in the article on "The judicial department," the county of **Gosper** is recognized as one of the counties of this state, and *Whereas*, Since about the 29th day of August, 1873, there has existed in the district of country bounded on the east by Phelps county, on the south by Furnas county, on the west by Frontier county, and on the north by Dawson county—an organized county in fact, called and known as Gosper county, but of the creation, organization, or naming of which there exists no sufficient record or evidence, therefore, *Be it enacted by the Legislature of the State of Nebraska:* Sec. 1. That all of the acts of the people of said district of country named in the preamble in and about the organization of said county and the establishment of county government therein, and all the official acts of the several county officers of said county, including all who have been officers of said county, or of any precinct, school district, or road district therein, since such *de facto* organization, be and the same are hereby declared to be legal and binding to all and every intent and purpose, the same as though the said county had been established, bounded, and named by legislative authority and duly organized by and under proclamation of the governor of the state, and the evidence of such proclamation and such organization duly preserved.

1881, p. 215.

765. [**Grant.**]—That all of that portion of the state of Nebraska commencing at the southeast corner of township twenty one (21) north, of range thirty-six (36) west of the sixth principal meridian; thence north on said range line to the northeast corner of township twenty-four (24) north, of range thirty-six (36) west; thence west along the south boundary line of Cherry county to the east county line of Sheridan county; thence south along the east boundary line of Cheyenne county to the south line of township twenty-one (21), range forty (40) west; thence east along said township line to the place of beginning, be and the same shall constitute the county of Grant.

1887, p. 345.

766. The county of **Greeley** is bounded as follows: Commencing at the southwest corner of township seventeen north, of range twelve west; thence east to the southeast corner of township seventeen north, of range nine west; thence north to the northeast corner of township twenty north, of range nine west; thence west to the northwest corner of township twenty north, of range twelve west; thence south to the place of beginning.

767. The county of **Harlan** is bounded as follows: Commencing at the southwest corner of township one north, of range twenty west; thence east to the southeast corner of township one north, of range seventeen west; thence north to the northeast corner of township four north, of range seventeen west; thence west to the northwest corner of township four north, of range twenty west; thence south to the place of beginning.

768. The county of **Hall** is bounded as follows: Commencing at the southwest corner of township nine north, of range twelve west; thence east to the southeast corner of township nine north, of range nine west; thence north to the northeast

corner of township twelve north, of range nine west; thence west to the northwest corner of township twelve north, of range twelve west; thence south to the place of beginning.

769. The county of **Hamilton** is bounded as follows: Commencing at the southwest corner of township nine north, of range eight west; thence east to the southeast corner of township nine north, of range five west; thence north to the middle of the south channel of the Platte river; thence west along the middle of said south channel to the line dividing ranges eight and nine west; thence south to the place of beginning.

770. [**Hayes.**]—All of that portion of territory bounded as follows, to-wit: Commencing at the northeast corner of township eight, range thirty-one west; thence west to the northwest corner of township eight, range thirty-five; thence south to the southwest corner of township five, range thirty-five; thence east to the southeast corner of township five, range thirty-one; thence north to the place of beginning, be and the same is hereby declared to be the county of Hayes.

1877, p. 212.

771. [**Hitchcock.**]—That all that portion of the state of Nebraska known and described as townships one, two, three, and four north, of ranges thirty-one, thirty-two, thirty-three, thirty-four, and thirty-five west, shall hereafter be known as the county of Hitchcock.

1873; G. S., p. 225.

772. The county of **Holt** is bounded as follows: Commencing at the southwest corner of township twenty-five north, of range sixteen west; thence east to the southeast corner of township twenty-five north, of range nine west; thence north to the middle of the main channel of the Missouri river; thence up said channel so far as it constitutes the boundary line of this state; thence west on said state line to the range line between ranges sixteen and seventeen; thence south on said range line to the point of beginning; *Provided*, This section shall not take effect until a majority of the legal voters of Holt county give their assent to such boundary change at the next general election in the manner provided by section 9 of chapter 18 of the Compiled Statutes of 1881, entitled "An act concerning counties and county officers," attaching "unorganized territory, not exceeding two townships," except that it shall be the duty of the county board to call said election without any petition having been presented to the county commissioners thereof; *Provided*, This section shall not take effect until this act shall have been ratified by a majority of the legal voters of Holt county, as above provided.

1883, p. 200.

773. [**Hooker.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township twenty-one (21) north, of range thirty-one (31) west of the sixth principal meridian; thence north along the west boundary line of Thomas county to the northeast corner of township twenty-four (24) north, of range thirty-one (31) west; thence west along the south line of Cherry county to the northwest corner of township twenty-four (24) north, of range thirty-five (35) west; thence south along the east boundary line of Grant county to the southwest corner of township twenty-one (21) north, of range thirty-five (35) west; thence east along the north boundary line of McPherson county to the place of beginning, be and the same shall constitute the county of Hooker.

1889, p. 69.

774. The county of **Howard** is bounded as follows: Commencing at the southwest corner of township thirteen north, of range twelve west; thence east to the southeast corner of township thirteen north, of range nine west; thence north

to the northeast corner of township sixteen north, of range nine west; thence west to the northwest corner of township sixteen north, of range thirteen west; thence south to the place of beginning.

775. The county of **Jefferson** is bounded as follows: Commencing at the southwest corner of township one north, of range one east; thence east to the southeast corner of township one north, range four east; thence north to the northeast corner of township four north, of range four east; thence west to the northwest corner of township four north, of range one east; thence south to the place of beginning.

776. [**Johnson.**]—The territory bounded as follows: Commencing at the southwest corner of township four north, of range nine east; thence east to the southeast corner of section thirty-three in township four north, of range twelve east; thence north by section lines to the northeast corner of section four in township six north, of range twelve east; thence west to the northwest corner of township six north, of range nine east; thence south to the place of beginning, shall be and constitute the county of Johnson.

777. [**Kearney.**]—The territory on the north bounded by the middle of the south channel of the Platte river; on the east, by the line dividing ranges twelve and thirteen west; on the south, by the first standard parallel; on the west, by the line dividing ranges sixteen and seventeen west, shall be and constitute the county of Kearney.

778. [**Keith.**]—That all that portion of the state of Nebraska lying between the west boundary line of Lincoln county and the east boundary line of Cheyenne county, and the boundary line between Nebraska and the territory of Colorado, and between the second and fourth standard parallels, north of the base line, shall hereafter be known as the county of Keith.

1873, G. S., p. 225.

779. The county of **Keya Paha** is bounded as follows: Commencing at the northeast corner of said Brown county and running thence south on the eastern boundary thereof to the center of the channel of the Niobrara river; thence up the center of said channel to the western boundary line of said Brown county; thence north along said boundary line to the northwest corner of said Brown county; thence east along said northern boundary line to the place of beginning.

Formed from Brown county by vote November 4, 1884.

780. The county of **Knox** is bounded as follows: Commencing at the southwest corner of township twenty-nine north, of range eight west; thence east to the southeast corner of township twenty-nine north, of range two west; thence north to the middle of the main channel of the Missouri river; thence along the middle of the main channel of said river to the point where the dividing line between ranges eight and nine west intersects the same; thence south to the place of beginning; *Provided*, That this act shall not take effect until the president of the United States shall by proclamation declare the Indian title to the unorganized territory transferred to Knox county by this act extinguished, and until a majority of the legal voters of Knox county gave their assent to the transfer of said unorganized territory in the manner provided by law.

1883, p. 201.

781. The county of **Kimball** is bounded as follows: Commencing at the northeast corner of section three in township number sixteen north, of range fifty-three west; thence due west on the township line between townships sixteen and seventeen north, to a point where said line intersects the east boundary line of the territory of Wyoming; thence south along the west boundary line of the state of

Nebraska to a point where the said line intersects the north boundary line of the state of Colorado; thence east along the south boundary line of the state of Nebraska to a point where said line intersects a line extending due north on the section line between sections sixteen and seventeen, township twelve north, range fifty-three west; thence north to the northwest corner of section four, in township twelve north, of range fifty-three west; thence due east to the southeast corner of section thirty-four in township thirteen north, of range fifty-three west; and thence due north to the place of beginning.

Formed from Cheyenne county November 6, 1888.

782. [**Logan.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township seventeen (17) north, range twenty-six (26) west, of the sixth principal meridian, running thence west along the north line of Lincoln county to the southwest corner of township seventeen (17) north, range twenty-nine (29) west; thence north to the northwest corner of township twenty (20) north, range twenty-nine (29) west; thence east to the northeast corner of township twenty (20) north, range twenty-six (26) west; thence south along the west line of Custer county to the point of beginning, be and the same shall constitute the county of Logan.

1885, p. 207.

783. The county of **Lancaster** is bounded as follows: Commencing at the southwest corner of township seven north, of range five east, thence east to the southeast corner of township seven north, of range eight east; thence north to the northeast corner of township twelve north, of range eight east; thence west to the northwest corner of township twelve north, of range five east; thence south to the place of beginning.

784. The county of **Lincoln** is bounded as follows: Commencing at the southwest corner of township nine north, of range thirty-four west; thence east to the southeast corner of township nine north, of range twenty-six west; thence north to the fourth standard parallel; thence west to a point where the dividing line between ranges thirty-four and thirty-five intersects the same; thence south to the place of beginning.

785. [**Loup.**]—All that portion of the state of Nebraska bounded as follows: Commencing at the northeast corner of township twenty-four north, of range seventeen west; thence west to the northwest corner of township twenty-four north, of range twenty west; thence south to the southwest corner of township twenty-one north, of range twenty west; thence east to the southeast corner of township twenty-one north, of range seventeen west; thence north to the place of beginning, be and the same shall hereby constitute the county of Loup.

1883, p. 202.

786. The county of **Madison** is bounded as follows: Commencing at the southeast corner of township twenty-one north, of range one west; thence north to the northeast corner of township twenty-four north, of range one west; thence west to the northwest corner of township twenty-four north, of range four west; thence south to the southwest corner of township twenty-one north, of range four west; thence east to the place of beginning.

787. [**McPherson.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township seventeen (17) north, of range thirty (30) west, of the sixth principal meridian; thence north along the west boundary line of Logan county to northeast corner of township twenty (20) north, of range thirty (30) west; thence west along said township line to the northwest corner of township twenty north, of range thirty-five (35) west; thence south on said range

line to southwest corner of township seventeen (17) north, of range thirty-five (35) west; thence east along the north boundary line of Lincoln county to the place of beginning, be and the same shall constitute the county of McPherson.

1887, p. 346.

788. **[Merrick.]**—The territory bounded as follows: Commencing at the northeast corner of township sixteen north, of range three west; thence south by the line dividing ranges two and three west to the middle of the south channel of the Platte river; thence westerly by the middle of said south channel to its intersection with the line dividing ranges eight and nine west; thence north by said line to the northwest corner of township sixteen north, of range eight west; thence east to the west boundary of the Pawnee Indian Reservation; thence by the boundaries of said reservation passing by its south side around the line dividing townships sixteen and seventeen north; thence east to the place of beginning, shall be and constitute the county of Merrick.

789. **[Nance.]**—That all that portion of the state of Nebraska included in and known as the Pawnee Reservation be and the same shall constitute the county of Nance.

1879, p. 148.

790. **[Lands attached to Nance county.]**—That all of sections numbered six (6), seven (7), eighteen (18), nineteen (19), thirty (30), and thirty-one (31), in township No. seventeen (17) north, of range No. eight (8) west, of the sixth (6th) principal meridian, lying west of the old Pawnee Indian Reservation be and the same are hereby attached to and made a part of said Nance county, Nebraska.

1881, p. 217.

791. The **boundaries** of the said Nance county are hereby extended so as to include all of said unorganized territory.

Id.

792. **[Nemaha.]**—The territory bounded as follows: Commencing at the southwest corner of section thirty-four in township four north, of range twelve east; thence north by section lines to the northwest corner of section three in township six north, of range twelve east; then east by the line dividing townships six and seven north, to its first intersection with the state boundary; thence around the old channel of the Missouri river, and including what is known as McKissock's island, by the eastern boundary of the state to the intersection thereof with the line dividing townships three and four north; thence by said line west to the place of beginning, shall be and constitute the county of Nemaha.

793. The county of **Nuckolls** is bounded as follows: Commencing at the southwest corner of township one north, of range eight west; thence east along the base line to the southeast corner of said township in range five west; thence north to the northeast corner of township four north, of range five west; thence west to the northwest corner of said township in range eight west; thence south to the place of beginning.

794. The county of **Otoe** is bounded as follows: Commencing at the southwest corner of township seven north, of range nine east; thence east to the middle of the main channel of the Missouri river; thence up said channel until it intersects the dividing line between townships nine and ten; thence west to the northwest corner of township nine north, of range nine east; thence south to the place of beginning.

795. The county of **Pawnee** is bounded as follows: Commencing at the southwest corner of township one north, of range nine east; thence east to the southeast corner of said township in range twelve east; thence north to the north-

east corner of township three north, of range twelve east; thence west to the northwest corner of township three north, of range nine east; thence south to the place of beginning.

796. The county of **Perkins** is bounded as follows: Commencing at the southwest corner of township nine north, of range forty-one west, of the sixth principal meridian; thence east to the southeast corner of township nine north, of range thirty-five; thence north to the northeast corner of section twenty-four, in township twelve north, of range thirty-five west; thence west on section lines to the northwest corner of section nineteen, in township twelve north, of range forty-one west; thence south along the state line to the southwest corner of township nine north, of range forty-one west; thence east to the place of beginning.

Formed from Keith by vote November 8, 1887.

797. [**Phelps.**]—That all that portion of territory commencing at the southwest corner of township five north, of the base line, and range twenty west of the sixth principal meridian; thence running north to the middle of the south channel of the Platte river; thence running in an easterly direction along the middle of the south channel until it reaches the line dividing the sixteenth and seventeenth ranges west of the said sixth principal meridian; thence south to the southeast corner of township five north, and seventeen west, as aforesaid; thence west to the place of beginning, be and the same shall constitute the county of Phelps.

1873; G. S., p. 223.

798. The county of **Pierce** is bounded as follows: Commencing at the southwest corner of township twenty-five north, of range four west; thence east to the southeast corner of township twenty-five north, of range one west; thence north to the northeast corner of township twenty-eight north, of range one west; thence west to the northwest corner of township twenty-eight north, of range four west; thence south to the place of beginning.

Amended 1875, p. 73.

799. The county of **Polk** is bounded as follows: Commencing at the southwest corner of township thirteen north, of range four west; thence east to the southeast corner of township thirteen north, of range one west; thence north to the south bank of the north channel of the Platte river; thence west along said south bank to the dividing line between ranges two and three west; thence to the middle of the south channel of the Platte river; thence west along said channel to a point where the dividing line between ranges four and five west intersects the same; thence south to the place of beginning.

800. The county of **Platte** is bounded as follows: Commencing at a point on the south bank of the Platte river where the dividing line between ranges one and two east crosses the same; thence along said south bank to a point where the dividing line between townships sixteen and seventeen intersects the same; thence to the south bank of the main channel of the Platte river; thence west along said south bank to its intersection with the lines dividing ranges two and three west; thence north by said line to the northwest corner of township sixteen north, of range two west; thence west on the fourth standard parallel to the eastern boundary of the Pawnee Indian reservation; thence west and north by the boundaries of said reservation to the line dividing ranges four and five west; thence north to the northwest corner of township twenty north, of range four west; thence east by the fifth standard parallel to the line dividing ranges one and two east; thence south to the place of beginning.

801. [**Red Willow.**]—That all that portion of the state of Nebraska known and described as townships one, two, three, and four north, of ranges twenty-six,

twenty-seven, twenty-eight, twenty-nine, and thirty west, shall hereafter be known as the county of Red Willow.

1873; G. S., p. 224.

802. The county of **Richardson** is bounded as follows: Commencing at the southwest corner of township one north, of range thirteen east; thence east to the middle of the main channel of the Missouri river; thence up said channel until it intersects the line dividing townships three and four north; thence west to the northwest corner of township three north, [of range thirteen east]; thence south to the place of beginning.

803. The county of **Rock** is bounded as follows: Commencing at the center of the channel of the Niobrara river, on the section line between sections twenty and twenty-one, township thirty-two, range twenty west of the sixth principal meridian; thence south on the said section line to the southwest corner of section thirty-three, township twenty-nine, range twenty west; thence east to the northwest corner of section four, township twenty-eight, range twenty west; thence south to the southwest corner of section thirty-three, township twenty-five, range twenty west; thence east to the range line between ranges sixteen and seventeen, between Brown county and Holt county; thence north on said range line to the middle of the channel of the Niobrara river; thence up the center of the channel of said river to the place of beginning.

Formed from Brown by vote November 6, 1888.

804. The county of **Saline** is bounded as follows: Commencing at the southwest corner of township five north, of range one east; thence east to the southeast corner of township five north, of range four east; thence north to the northeast corner of township eight north, of range four east; thence west to the northwest corner of township eight north, of range one east; thence south to the place of beginning.

805. The county of **Sarpy** is bounded as follows: Commencing at a point in the middle of the main channel of the Missouri river, due east of a point in the middle of the main channel of the Platte river, where the same disembogues into said Missouri river; thence up the middle of the main channel of the said river to a point two miles due south of the north line of township fourteen north; thence due west to the middle of the main channel of the Platte river; thence down said channel to the place of beginning.

806. The county of **Saunders** is bounded as follows: Commencing at the southwest corner of township thirteen north, of range five east; thence east to the southeast corner of township thirteen north, of range eight east; thence south two miles; thence east six miles; thence north two miles; thence east to the main channel of the Platte river; thence up said main channel until it intersects the line dividing ranges four and five east; thence south to the place of beginning.

807. The county of **Scott's Bluff** is bounded as follows: Commencing at the northeast corner of section five in township twenty-three north, of range fifty-two west, of the sixth principal meridian; thence due west along the north boundary line of Cheyenne county, Nebraska, to a point where the said line intersects the east boundary line of the territory of Wyoming; thence south along the west boundary line of the state of Nebraska to a point on the section line between sections eighteen and nineteen in township twenty north, of range fifty-eight west; thence due east on said section line to the southeast corner of section thirteen in township twenty north, of range fifty-three west; thence north on the range line between ranges fifty-two and fifty-three west, to the northeast corner of section one in township twenty north, of range fifty-three west; thence east to the southeast corner of sec-

tion thirty-two in township twenty-one north, of range fifty-two west, and thence due north to the place of beginning.

Formed from Cheyenne by vote November 6, 1888.

808. The county of **Seward** is bounded as follows: Commencing at the southwest corner of township nine north, of range one east; thence east to the southeast corner of township nine north, of range four east; thence north to the northeast corner of township twelve north, of range four east; thence west to the northwest corner of township twelve north, of range one east; thence south to the place of beginning.

809. [**Sheridan.**]—That all that portion of Sioux county, of the state of Nebraska, commencing at the southeast corner of township twenty-four (24) north, of range forty-one (41) west, of the sixth principal meridian; thence west to the southwest corner of township twenty-four (24) north, of range forty-six (46); thence north on the range line between ranges forty-six (46) and forty-seven (47) to the northern boundary line of the state of Nebraska; thence east along said boundary line to the range line between ranges forty (40) and forty-one (41); thence south on said range line to the point of beginning, be and the same shall constitute the county of Sheridan.

1885, p. 208.

810. The county of **Sherman** is bounded as follows: Commencing at the southwest corner of township thirteen north, of range sixteen west; thence east to the southeast corner of township thirteen north, of range thirteen west; thence north to the northeast corner of township sixteen north, of range thirteen west; thence west to the northwest corner of township sixteen north, of range sixteen west; thence south to the place of beginning.

811. That all that portion of **Sioux** county of the state of Nebraska, commencing at the southeast corner of township twenty-four (24) north, of range fifty-three west, of the sixth principal meridian; thence west to the western boundary line of the state of Nebraska; thence north along the said boundary line to the northwest corner of the state of Nebraska; thence east on the northern boundary line of the state of Nebraska to the range line between ranges fifty-two (52) and fifty-three (53); thence south to the place of beginning, be and the same shall constitute the county of Sioux.

1885, p. 209.

812. The county of **Stanton** is bounded as follows: Commencing at the southwest corner of township twenty-one north, of range one east; thence east to the southeast corner of township twenty-one north, of range three east; thence north to the northeast corner of township twenty-four north, of range three east; thence west to the northwest corner of township twenty-four north, of range one east; thence south to the place of beginning.

813. The county of **Thayer** is bounded as follows: Commencing at the southwest corner of township one north, of range four west; thence east to the southeast corner of township one north, of range one west; thence north along the sixth principal meridian to the first standard parallel; thence west to the northwest corner of township four north, of range four west; thence south to the place of beginning.

814. [**Thomas.**]—That all that portion of the state of Nebraska commencing at the southeast corner of township twenty-one (21) north, of range twenty-six (26) west, of the sixth (6) principal meridian, running thence north along the west line of Blaine county to the northeast corner of township twenty-four (24) north, of range twenty-six (26) west; thence west along the south line of Cherry county to

the northwest corner of township twenty-four (24) north, of range thirty (30) west; thence south along said range line to the southwest corner of township twenty-one (21) north, of range thirty (30) west; thence east along the north line of Logan county to the place of beginning, be and the same shall constitute the county of Thomas.

1887, p. 347.

815. The territory bounded as follows shall constitute the county of **Thurston**: Commencing at the southeast corner of section thirty-four (34), township twenty-five (25) north, of range five east, sixth P. M.: thence east to the northeast corner of township twenty-four (24) north, of range seven (7) east, sixth P. M.; thence south to the south line of the Omaha Indian reservation, as originally surveyed; thence east along said line to the southwest corner of section twenty-eight (28), township twenty-four (24) north, of range ten (10) east, sixth P. M.; thence north to the northwest corner of section twenty-one (21), township twenty-four (24) north, of range ten (10) east, sixth P. M.; thence east to the eastern boundary of the state of Nebraska; thence in a northwesterly direction along said boundary line to its intersection with the section line dividing sections twenty-five (25) and thirty-six (36), township twenty-seven (27) north, of range nine (9) east, sixth P. M.; thence west to the northwest corner of section thirty-four (34), township twenty-seven (27) north, range six (6) east, sixth P. M.; thence south to the southwest corner of section thirty-four (34), township twenty-seven (27) north, range six (6) east, sixth P. M.; thence west to the northwest corner of section two (2), township twenty-six (26) north, of range five (5) east, sixth principal meridian; thence south to the place of beginning.

1889, p. 71.

816. The county of **Valley** is bounded as follows: Commencing at the southwest corner of township seventeen north, of range sixteen west; thence east to the southeast corner of township seventeen north, of range thirteen west; thence north to the northeast corner of township twenty north, of range thirteen west; thence west to the northwest corner of township twenty north, of range sixteen west; thence south to the place of beginning.

817. The county of **Washington** is bounded as follows: Commencing at the northeast corner of section thirty (30), in township twenty (20) north, of range nine (9) east; thence east on a line parallel with the dividing line between townships nineteen and twenty, and two miles north of the same, to the middle of the main channel of the Missouri river; thence down said channel to a point where the dividing line between ranges sixteen (16) and seventeen (17) intersects the same; thence west to the southeast corner of section thirty-one (31), township seventeen (17) north, range ten (10) east; thence north on section lines three (3) miles, to the northeast corner of section nineteen (19), township seventeen (17) north, of range ten (10) east; thence west on section lines two miles to southwest corner of section thirteen (13), township seventeen (17), range nine (9) east; thence north on section lines one mile, to northwest corner of section thirteen (13), last aforesaid; thence west on section line one mile to southwest corner of section eleven (11), township seventeen (17) north, range nine (9) east; thence north on section lines one mile, to northwest corner of said section eleven (11), last aforesaid; thence west on section lines one mile, to the southwest corner of section three (3), township seventeen (17), range nine (9) east; thence north on section lines one mile, to the northwest corner of said section three (3); thence west on section line one mile, to northwest corner of section four (4), township seventeen (17), range nine (9) east; thence north on section line one mile, to northeast corner of section thirty-two (32), township

eighteen (18), range nine (9) east; thence west one-half mile on section line, to northwest corner of the northeast quarter of section thirty-two (32), township eighteen (18), range nine (9) east; thence north on half-section line two miles, to the southeast corner of the southwest quarter of section seventeen (17), township eighteen (18), range nine (9) east; thence west on section line one-half mile, to southwest corner of section seventeen (17), township eighteen (18), range nine (9) east; thence north to the place of beginning.

Amended 1887, p. 348.

818. The county of **Wayne** is bounded as follows: Commencing at the southwest corner of township twenty-five (25) north, of range one (1) east; thence east to [the southeast corner of section thirty-four (34), township twenty-five north, of range five (5) east; thence north to the northeast corner of section three (3), township twenty-six (26) north, of range five (5) east; thence west to the northeast corner of township twenty-six (26) north, of range three (3) east; thence north to the northeast corner of township twenty-seven (27) north, of range three (3) east; thence west to the northwest corner of township twenty-seven (27) north, of range one (1) east; thence south to the place of beginning.

Amended 1889, p. 70.

819. The county of **Webster** is bounded as follows: Commencing at the southwest corner of township one north, of range twelve west; thence east to the southeast corner of township one north, of range nine west; thence north to the northeast corner of township four north, of range nine west; thence west to the northwest corner of township four north, of range twelve west; thence south to place of beginning.

820. **[Wheeler.]**—All that portion of the state commencing at the southeast corner of township twenty-one (21) north, of range nine (9) west of the sixth principal meridian; running thence north to the northeast corner of township twenty-four (24) north, of range nine (9) west; thence west to the northwest corner of township twenty-four (24) north, of range sixteen (16) west; thence south to the southwest corner of township twenty-one (21) north, of range sixteen (16) west; thence east to the place of beginning, be and the same shall hereby constitute the county of Wheeler.

1887, p. 211. Garfield formed from Wheeler November 8, 1881.

821. The county of **York** is bounded as follows: Commencing at the southwest corner of township nine north, of range four west; thence east to the southeast corner of township nine north, of range one west; thence north to the northeast corner of township twelve north, of range one west; thence west to the northwest corner of township twelve north, of range four west; thence south to the place of beginning.

Secs. 822 to 835. "An act to provide for the **organization of new counties** and to locate the county seats thereof." In force September 1, 1873. G. S., p 228.

822. When it shall be made to appear by the affidavit of three resident freeholders in any one of the unorganized counties of this state that such county contains a **population** of not less than two hundred inhabitants, and ten or more of such inhabitants being taxpayers, may, by memorial, petition the governor to appoint three persons therein mentioned, to act as special county commissioners, and one person by them named to act as a special clerk for such county; and shall also name some place, centrally located in the county, for a **temporary** county **seat**; whereupon it shall be the duty of the governor to appoint and commission the persons so named for special county **officers**, and shall, by appointment, under his hand and seal, declare the said place the temporary county seat of such county.

823. The said commissioners and clerk, before entering upon the discharge of

their respective duties, shall take and subscribe an **oath**, faithfully, promptly, and impartially to perform them as herein required; and such oath shall be filed with and left in the office of the county clerk.

824. The said commissioners, or a majority of them, shall proceed to divide such county into suitable and convenient **precincts**, and such commissioners shall give at least thirty days' previous notice of the time which they shall fix upon for holding the first election of precinct and county officers, by conspicuously posting in one of the most public places in each precinct notices of such election, subscribed by them, and attested by the clerk; the notices posted in each precinct shall specify the place of voting therein.

Precincts are mere territorial divisions created for certain political and administrative purposes, and without the semblance of corporate character. They can neither plead nor be impleaded in actions, nor are they capable of imposing upon themselves any obligation or liability except in pursuance of express legislative authority. **10**, 22 (4 N. W., 370).

825. The voters at such election may assemble at nine o'clock A. M., in each precinct, and shall select from among their own number two judges and two clerks for the **election**, who, before they enter upon the discharge of their duties, shall take the oath required by judges and clerks of election, any one of whom may administer such oath to the other; and the said election shall be governed by the laws regulating elections at the time. The special commissioners shall constitute the board of canvassers for such election, and in the discharge of their duties as such, shall be governed by the law in force at that time.

County is permanently organized upon holding election and canvassing votes. **11**, 601 (10 N. W., 525).

826. At such first election, the voters of the county shall determine the **permanent** location of the **county seat**; for this purpose each voter may designate on his ballot the place of his choice for the county seat, and when the votes are canvassed, the place having a majority of all the votes polled shall be the county seat, and public notice of said location shall be given by the county commisssoners within thirty days, by posting up notices in three several places in each precinct in the county, and a copy of such notice shall be recorded by the county clerk in the book of miscellaneous records.

827. In any county where an **election** has been heretofore held under any law existing at the time of said election, to determine the permanent location of the county seat of such county, and said election shall be declared **void** by any court of competent jurisdiction in an action instituted for that purpose, the county commissioners of said county shall submit, at the **next** general **election** to be held sixty days after the entering of such judgment, to the qualified voters of the county seat of the county, as if no election had ever been held in such county.

Entirely rewritten 1883, p. 185. Election cannot be called without petition. **16**, 216 (20 N. W., 213).

828. If no one place has a majority of all the votes polled, as provided in section five [826], it shall be the duty of the county commissioners within one month after said election, or within one month after the officers elected at the first election have qualified according to law, to order a **special election**, and give ten day's notice thereof, by posting up three notices in each precinct in said county, at which election votes shall be taken by ballot between the three highest places voted for at the first election; and if no choice is made at such election, notice of **another** election shall be given as above provided for, to decide between the two places having the highest number of votes at the last election, and the place having the highest number of votes shall be the county seat.

829. Whenever any **county seat** shall be located **upon** any **public lands**

of the United States, it shall be the duty of the county commissioners to enter or purchase a quarter section of land at the place so designated, at the expense of and for the use of the county, within three months thereafter, if said land be subject to private entry; if not, the commissioners shall claim the same as a pre-emption under the laws of the United States, for the use of said county.

830. Such **land** shall be **surveyed** into lots, squares, streets, and alleys, and platted and recorded in the county clerk's office; and lots necessary for public buildings shall be reserved by the commissioners for that purpose.

831. The remainder of said **lots** shall be offered at public **sale** by the sheriff of the county to the highest bidder, at such time as the county board may designate. Notices of such sale shall be posted up in three public places of the county, and published in some newspaper of general circulation therein, at least thirty days previous to such sale. The terms of sale shall be determined by the county commissioners, and they may dispose of lots at private sale upon such terms as they may deem best.

832. **Purchasers** of the aforesaid lots shall receive a certificate of purchase from the sheriff, entitling the holder to a deed for the same, when payment in full shall be made according to law. If the purchaser of any lot fails to pay for the same within the time required by the county commissioners, not to exceed one year in any case, the right of the purchaser to such lot shall be forfeited, and the same shall be again sold by the county commissioners as hereinbefore provided.

833. The **proceeds** of the sale of such lots, after deducting all necessary expenses, shall be paid into the county treasury and constitute a **fund for** the erection of public **buildings** for the use of the county, at the county seat, and shall be used for no other purpose whatever.

834. Whenever any county organized under the provisions of this chapter shall have been previously attached to any other county for election, judicial, and revenue purposes, it shall be the duty of the county clerk chosen at the first election, after having qualified according to law, to procure from the proper officer of such county a **transcript of** all **deeds,** mortgages, judgments, and liens of every description upon real or personal property lying and being in such newly organized county, and cause the same to be **recorded** in the proper offices of his own county; such clerk shall be at full liberty to take such transcripts himself, and when recorded in the proper office in his own county, shall stand headed with the name of the county and offices where taken, and a certificate attached thereto that they are correct; and such clerk shall receive for his services ten cents per folio for taking such transcripts, ten cents per folio for recording them, and ten cents per mile for traveling in going after and returning with them, which shall be audited, allowed, and paid to him by his own county.

835. All county and precinct **officers** elected at the first election as herein provided shall continue to hold their respective offices until the next general election held for the same offices in other counties, as provided by the election law in force at that time, and until their successors are elected and qualified.

Secs. 836 to 844. "An act to provide for the **relocation of county seats.**" 1875, p. 159. In force February 24. Repealing section 8, p. 229, G. S.

836. Whenever the inhabitants of any county are desirous of changing their county seat, and upon **petitions** therefor being presented to the county commissioners, signed by resident electors of said county, equal in number to three-fifths of all the votes cast in said county at the last general election held therein, said petition shall contain, in addition to the names of the petitioners, the section, township, and range on which, or town or city in which the petitioners reside, their ages

and time of residence in the county, it shall be the duty of such board of commissioners to forthwith call a special **election** in said county for the purpose of submitting to the qualified electors thereof the question of the relocation of the county seat. Notice of the time and the places of holding said election shall be given in the same manner, and said election shall be conducted in all respects the same as is provided by law relating to general elections for county purposes. The electors at said election shall designate on their ballots what city, town, or place they desire said county seat located at or in, and any place receiving three-fifths of all the votes cast shall become and remain, from and after the first day of the third month next succeeding such election, the county seat of said county.

Cannot call election without petition. **16,** 216 (20 N. W., 213). Objection to petition must be made before election. **7,** 390. To authorize the board to call such an election the petition must contain the requisite number of names *at the time* it is acted upon by them, and any of the petitioners may withdraw their names at any time before such petition is acted upon by the board. **10,** 35 (4 N. W., 373). The notice must conform to the law. The place of removal must be stated on the ballots. **3,** 252. County board proper tribunal in first instance to determine whether petition was signed by requisite number of electors. **21,** 578 (32, N. W., 589). When the intention of the voter is clearly ascertainable from his ballot, together with extrinsic evidence of a public nature, the law requires the counting of the ballot. **5,** 147.

837. If it shall appear upon the **canvass** of said votes that no one place has received three-fifths of all the votes cast, and if it shall further appear that three-fifths of all the votes cast have been cast in favor of places other than the one where said county seat is then located, it shall be the duty of said board of county commissioners to immediately call a **special election** in the same manner as provided in section one of this act.

Board cannot be compelled to canvass forged returns. **24,** 509–10 (39, N. W., 431). Canvassers have no right to throw out illegal votes; nor will mandamus lie to compel commissioners to canvass votes. **8,** 291.

838. At which election the electors of said county shall **designate** upon their ballots either the name of the place where the county seat is then located, or one of the two **places,** other than the said county seat, which received the largest number of votes cast at the special election first held, and in canvassing said votes no votes shall be counted except such as are cast for one of the three places before mentioned.

839. If three-fifths of all said votes so to be counted shall be in favor of the **relocation** of such county seat at either of the places voted for, the place receiving three-fifths of such votes shall become and remain from and after the first day of the third month next succeeding said election the county seat of such county.

840. If it shall appear upon the canvass of said vote that no one place has received three-fifths of all the votes legally cast at said election, and if it shall **further** appear that less than two-fifths of all said votes have been cast in favor of the present county seat, said board of county commissioners shall, at the next general **election** held in such county, again submit to the electors thereof the question of the relocation of the county seat.

841. If the present county seat received a less number of votes, at the **second special election** hereinbefore provided for, than either of the other places voted for thereat, then the electors shall designate on their ballots the name of one of the two places, other than said county seat, where they desire the county seat so located, and the one of said places receiving the largest number of votes shall be and become, from and after the first day of January following such election, the county seat of said county; but if at said election only one of the places voted for received more votes than the place where the county seat is then located, the electors of said county shall designate upon their ballots either the name of the place where the

county seat is then located, or of the place which received the highest number of votes cast at the aforesaid special election, and in canvassing said votes no votes shall be counted except such as are cast for one of the two places before mentioned.

842. If three-fifths of all said votes so to be counted shall be in favor of the **relocation** of such county seat, the place so receiving three-fifths of all of said votes shall become and **remain,** from and after the first day of January next succeeding said election, the county seat of such county.

843. If at either of the elections in this act provided for more than two-fifths of the votes cast shall be in favor of the place where the county seat is then located, the **question** of the relocation thereof shall **not** be **again submitted** for the space of two years from the date of said election, and in case the county seat shall be relocated as herein provided for, the question of the relocation thereof shall not be again submitted to the electors for the space of five years thereafter.

844. When any such county seat shall have been relocated, it shall be the duty of county officers to forthwith **remove** their respective **offices**, and all county records, papers, and property in their offices or charge, **to** the place where said **county seat** shall have been **relocated**; and any county officer who shall refuse to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one thousand dollars, and a conviction of any such officer of such misdemeanor shall work a vacancy in his said office.

County commissioners or county officers have no discretion whatever after the result is announced. **15,** 305 (18 N. W., 93).

Secs. 845 to 927. "An act concerning **counties and county officers.**"* 1879, p. 353. In force September 1.

845. The **boundaries** of the several counties of this state shall remain as are established until the same be changed according to law.

846. In all cases where any organized county lies adjacent to any boundary line of this state, and it shall appear that any island, territory, or tract of land lies between such county and the state boundary, and is not included within the defined boundaries of any organized county, and is not a military reservation of the United States, such **unincluded** island, **territory,** or tract of land shall attach to and be a part of such adjacent county for all purposes, until otherwise provided by law.

847. Where any county is bounded by the middle of the channel of any **stream** water-course, and by reason of any **change** of such **channel** any island or tract of land shall be thrown to the other side of such bounding channel, after the original organization and establishment of the boundaries of any county, the old channel of the stream or water-course shall, for all county and state purposes, be deemed the channel thereof.

848. When a majority of the legal voters, residing upon any **territory,** shall petition the county board of their own county, and also of the county to which they desire such territory to be **transferred,** for leave to have such territory transferred to such county, it shall be the duty of the several county boards so petitioned to submit the question at the next general **election** in said counties; **Provided,* That no such petition shall be granted until after the expiration of three years from last submission of the question.

Amended 1885, p. 210. All after * added 1889, p. 74.

849. **Notices** of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfe

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*The title "counties and county officers" is not open to the constitutional objection of containing more than one subject. **12,** 387 (11 N. W., 495). Secs. 73 to 131 of this act are inserted in the chapter on Officers; secs. 132 to 141 in that on Public Finances.)

is intended to be made, and shall be posted with the other notices for general elections.

850. The **ballots** used in the said elections may be in the following form, to-wit: "For transferring territory," and "Against transferring territory," when, if a majority of the voters voting upon said question in the county from which said territory is proposed to be taken, and a majority of the voters of the county to which the same is proposed to be transferred, shall be "For transferring territory," then the said **territory** shall be **transferred** to and become a part of the county to which it is proposed to transfer the same, on and after the first day of January succeeding such election, and shall be subject to all the **laws**, rules, and regulations thereof; *Provided*, That all assessments and collections of taxes and judicial or other official proceedings commenced prior to said first day of January, shall be continued, prosecuted, and completed in the same manner as if no transfer had been made; *And provided further*, That all township or precinct officers within said transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire.

851. No **county** shall be reduced under the provisions of this act to less **contents** than 400 square miles.

852. No transferred territory under the provisions of this act shall be released from the payment of its proportion of the **debts** of the county from which such territory is transferred; and such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred—such rate to be ascertained by the certificate of the county clerk of said last named county, and when so collected, to be paid over to the county entitled thereto. The territory so transferred shall not be taxed for the payment of any indebtedness of the county to which said territory is transferred, incurred previous to said transfer.

853. When any **unorganized territory** lies adjoining to and is not embraced within the boundaries of any county, and a majority of the inhabitants of said territory petition the commissioners of said adjoining county to be attached to the same, the county board of said county shall within sixty days order an election as provided for in sections 4, 5, and 6 of this act [848–850], and said territory shall become attached to and be a part of said county by a majority vote of the same, and be subject in all other respects to the provisions of this act.

Amended 1885, p. 210.

854. Whenever it is desired to form a **new county** out of one or more of the then existing counties, and a petition praying for the erection of such new county, stating and describing the territory proposed to be taken for such new county, together with the name of such proposed new county, signed by a majority of the legal voters residing in the territory to be stricken from such county or counties, shall be presented to the county board of each county to be affected by such division, and it appearing that such new county can be constitutionally formed, it shall be the duty of such county board or county boards to make an order providing for the submission of the question of the erection of such new county to a **vote** of the people of the counties to be affected, at the next succeeding general election of which the notice shall be given, the votes canvassed, and the returns made as in case of election of county officers, and the form of the ballot to be used in the determination of such question shall be as follows: "For new county," and "Against new county."

Propositions may be separately submitted at same election. **24,** 43-5 (38 N. W., 40).

855. If it shall appear that three-fifths of all the votes cast at such **election**, in each of the counties interested, is in favor of the erection of such new county, the county clerk of each said counties shall certify the same to the secretary of state, stating in such **certificate** the name, territorial contents, and boundaries of such new county; whereupon the secretary of state shall notify the governor of the result of such election, whose duty it shall be to order an election of county **officers** for such new county, at such time as he shall designate, and he may, when necessary, fix the place of holding election, notice of which shall be given in such manner as the governor shall direct. At such election the qualified voters of said new county shall elect all county officers for said county, except as hereinafter excepted, who shall be commissioned and qualified in the same manner as such officers are in other counties in this state, and who shall continue in office until the next general election for such officers, and until their successors are elected and qualified, and who shall have all the jurisdiction and perform all the duties which are or may be conferred upon such officers in other counties of this state.

Vote required changed from majority, 1889, p. 74. These officers only hold until the next general election or until their successors qualify. **26**, 399 (41 N. W., 988). Not duty of treasurer of old county to collect from new, unpaid taxes levied before division. **27**, 424 (43 N. W., 243).

856. All the justices of the peace, constables, and other township or precinct **officers** who were previously elected and qualified in the county or counties from which such new county has been formed, whose term of office shall not have expired at the time of said election, and whose residence shall be embraced within the limits of said new county, shall continue in office until their terms of office shall expire, and until their successors shall be elected and qualified.

857. The **votes** for the county officers of said new county shall be **canvassed** and returns made by the county clerk or county clerks of the county or counties from which such new county was formed, as provided by law in other cases.

858. The **oath of office** may be administered to the several county officers of such new county by any person authorized by law to administer oaths; and as soon as said county officers are duly qualified, the county shall be regarded as legally organized, and for **judicial** purposes shall be deemed and taken as belonging to the **district** in which said new county, or the greater part thereof, is embraced, and terms of the district court shall be held at such place in said new county as the county board thereof shall designate, until the county seat thereof shall be permanently located. The times of holding such court shall be appointed by the judge thereof until otherwise provided by law.

859. The **courts** of any county or counties from which such new county is erected may, by proper order, **transfer** any **suit** or other legal proceeding affecting real estate in such new county to the proper court of such new county, or may transfer any suit and all papers and records pertaining thereto to such new county, when all the parties thereto are residents of such new county; but all judgments and other liens in the county or counties from which such new county was erected shall have the same effect as if no new county had been erected.

860. All the **property**, both real and personal, and all the debts and liabilities and choses in action **of** every kind belonging to the county or **counties** from which such new county was formed, shall be **divided** by the several county boards of the counties interested between the county or counties from which such new county is formed and the new county, in proportion to the assessed value of property for the last preceding year, which has been taken from such original county or counties and carried to such new county; and if such board cannot agree upon such division, they may refer the matters of difference to arbitrators, or the rights to such property

may be settled by a suit in the district court, brought by either party for that purpose. In case the said property cannot be divided or removed, the county receiving the same shall pay to the other a proportionate value for the same.

Whether applies to uncollected taxes, *quære*. **27,** 424 (43 N. W., 243).

861. The county clerk of the new county shall **transcribe** in books prepared for that purpose, from the **records** of the county or counties from which the new county is formed, all deeds, mortgages, leases, and title papers of every description, with the certificate of acknowledgment thereto, and the date of filing the same **for** record, of lands lying in the **new county,** which were previously recorded in the county or counties from which the new county was formed; and said clerk shall be allowed by such new county such compensation as his services are reasonably worth. The clerk of such new county shall also prepare a numerical index of the lands and lots in such new county in the same manner as county clerks are by law directed to prepare and keep such index.

862. Said **clerk** shall note at the end of each paper he shall transcribe the book and page from which the same was transcribed, and shall make a correct double index of said records; and on the completion of his **duties** said clerk shall return said books to the county clerk of said new county, with his certificate attached thereto, showing that he has complied with the law: whereupon they shall be taken and considered to all intents and purposes as books of records of deeds, mortgages, and title papers for said new county. And copies of said record, certified by the officer having the custody of the same, shall be evidence in all courts and places, in the same manner that copies of records are evidence in other cases, and with like effect.

See **24,** 112 (37 N. W., 936).

863. The county seat of such new county shall be fixed as provided by law for the fixing of county seats upon the organization of new counties.

864. Each **county** which has heretofore been or may hereafter be established in this state, according to the laws thereof, shall be a **body** politic and **corporate,** by the **name** and style of "The county of..................," and by that name may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject-matter, either in law or equity, or other place where justice shall be administered.

865. The powers of the county as a body corporate or politic shall be exercised by a **county board,** to-wit: In counties under township organization by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law; in counties not under township organization, by the board of county commissioners.

866. Each **county** shall have **power**: *First*—To purchase and hold the real and personal estate necessary for the use of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff or is interested, *and all real estate conveyed by general warranty deed to trustees, in which the county is the beneficiary, whether such real estate is situated in the county so interested, or in some other county or counties of the state.* *Second*—To sell and convey, or lease, any real or personal estate owned by the county. *Third*—To make all contracts and to do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers.

* to * added 1889, p. 491.

867. The **county boards** of the several counties shall have **power**: *First*—To take and have the care and custody of all the real and personal estate owned

by the county. *Second*—To manage the county funds and county business, except as otherwise specifically provided. *Third*—To make all orders respecting the property of the county, to keep the county buildings insured, to sell the public grounds or buildings of the county, and purchase other property in lieu thereof; **Provided*, That said county boards may, if they deem it for the best interests of the county, to sell county property upon such terms of credit as shall by resolution of said county boards be determined upon; *Provided further*, That such deferred payments shall be for not more than two-thirds of the purchase price, the same to be secured by note or notes, and a first mortgage upon the property so sold, said deferred payments to draw not less than six (6) per cent interest per annum from date until paid, said interest to be paid annually. Said county boards shall also have the power to sell or negotiate, without recourse upon the county, said notes and mortgage so by them taken, provided the same shall not be sold for less than par value, including accrued interest.* *Fourth*—To lay out, alter, or discontinue any road running through their county, and perform such duties concerning roads as may be prescribed by law. *Fifth*—To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county. *Sixth*—To authorize the vacation of any city or village plat when the same is not within any incorporated city or village, on the petition of two-thirds of the owners thereof. *Seventh*—To change the name of any city or village plat on the petition of a majority of the legal voters residing therein, when the inhabitants thereof have not become a body corporate.

* to * added 1887, p. 350. Powers of county boards those prescribed by law or incidentally necessary to carry them into effect. **6**, 460. Have original jurisdiction of claims, but appeal lies to district court. **6**, 116. Claimant may appeal from decision of the board to district court. **6**, 203. Two members of a board cannot try a third for an alleged misdemeanor. **5**, 404. Board no authority to raise or lower fees; must draw warrants for what the law allows. **7**, 132. No power to issue bonds. **6**, 233. Members of the board are not liable individually for injuries received from defective roads. **5**, 392. Board not concluded by certificate of judge allowing attorney fee in a felony. **23**, 766 (37 N. W., 626).

868. The county board shall not sell the **public grounds**, as provided in the third subdivision in the preceding section, without having first submitted the question of **selling** such public grounds to a vote of the electors of the county.

869. It shall be the **duty of** the county **board** of each county:

First. To cause to be annually levied and collected **taxes** authorized by law for county purposes, not exceeding one dollar and fifty cents on the one hundred dollars' valuation, unless authorized by a vote of the people of the county, and in addition thereto sufficient to pay the interest, and create a sinking fund for the payment of the principal, of all indebtedness which existed at the adoption of the constitution, November 1, 1875.

Second. To **erect** or otherwise provide a suitable court house, jail, and other necessary county **buildings**, and for that purpose to borrow money and issue the bonds of the county to pay the same; to keep the said buildings in repair and to provide suitable rooms and offices for the accommodation of the several courts of record, the county board, clerk, treasurer, sheriff, clerk of the district court, county superintendent, county surveyor, and county attorney (provided said county attorney shall hold his office at the county seat), and suitable furniture therefor. But no appropriation exceeding fifteen hundred dollars shall be made for the erection of any county building without first submitting the proposition to a vote of the people of the county at a general election or a special election ordered by said board for that purpose, and the same is ordered by a majority of the legal voters voting thereon.

This subdivision originally required a two-thirds vote; changed to three-fifths and otherwise amended 1887, p. 355; again amended and vote changed to a majority, 1889, p. 83. Bonds to build county jail cannot be issued by county commissioners under this. **18,** 287 (25 N. W., 91). Amendatory act of 1889 constitutional. **27,** 758 (43 N. W., 1140); **27,** 784 (43 N. W., 1143); **29,** 149. See **23,** 134 (36 N. W., 348).

Third. To provide and keep in repair, when the finances of the county will permit, suitable **fire-proof safes** for the county clerk and county treasurer.

Fourth. To provide suitable **books** and **stationery** for the use of the county board, county clerk, county treasurer, county judge, sheriff, clerk of the district court, *county superintendent, and county attorney.

All after * added 1887, p. 353.

Fifth. To cause to be published at the close of each annual, regular, or special meeting of the board a brief statement of the **proceedings** thereof in one newspaper of general circulation **published** in the county, and also their proceedings upon the equalization of the assessment roll; *Provided,* That no publication in a newspaper shall be required unless the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

Sixth. At their regular meeting in January of each year to prepare an **estimate of** the necessary **expenses** of the county during the ensuing year, the total of which shall in no instance exceed the amount of taxes authorized by law to be levied during that year, including the amounts necessary to meet outstanding indebtedness, as evidenced by bonds, coupons, or warrants legally issued; and such estimate, containing the items constituting the amounts, shall be entered at large upon their records and published four successive weeks before the levy for that year in some newspaper published and of general circulation in the county, or if none is published, then in some newspaper of general circulation therein; and no levy of taxes shall be made for any other purpose or amounts than are specified in such estimate as published, but any item or amount may be stricken from such estimate, or reduced, at the time the levy is made. If any levy shall be made in excess of such estimate, the tax shall not therefore be void, but the members of the county board and their sureties shall be jointly and severally liable upon their official bonds for the full amount of such excess, which shall be collected by civil action, as in other cases, for the use of the school fund of the county. If the members of the said board neglect to comply with any other provisions of this section, the tax shall not therefore be void, but they shall each be liable to a penalty of five hundred dollars, to be recovered by civil action, as in other cases, for the use of the school fund of the county.

Where estimate does not include outstanding warrants of preceding years, the fund arising from the levy of the present year cannot be legally used to pay warrants of preceding years; not, at least, until all of the expenditures contemplated by the yearly estimate for present year have been met. **12,** 32 (10 N. W., 406). County board will not be compelled to act upon claims where no estimates have been made and there are no funds in the treasury for their payment. **13,** 525 (14 N. W., 517). Tax levied for "county bridge fund," although not based upon a previous estimate, is valid. **12,** 314 (11 N. W., 329).

Seventh. That in all cases where any bridge or any **public** building, the **property** of any county within this state, shall be **injured** or destroyed by any person or persons, either negligently, carelessly, or willfully and maliciously, it shall be the duty of the county **board** of the proper county, for and in the name of the county, to **sue** for and recover such damages as shall have occurred by reason thereof, and the money so recovered shall be paid into the treasury of the proper county, and be by the treasurer credited to the fund out of which bridge or building was constructed or repaired.

870. Whenever the county board shall deem it necessary to assess **taxes,** the aggregate of which shall exceed the rate of one dollar and fifty cents per one hundred dollars valuation of the property of the county, except when such **excess** is to be

used for the payment of indebtedness existing at the adoption of the constitution, the county board may, by an order entered of record, set forth substantially the amount of such excess required and the purpose for which the same will be required, and if for the payment of interest or principal, or both, upon bonds, shall in a general way designate the bonds and specify the number of years such excess will require to be levied and provide for the **submission** of the question of assessing the additional rate required to a vote of the people of the county at the next election for county officers after the adoption of the resolution, * or at a special election ordered by said county board for that purpose.* If the proposition for such additional tax be carried, the same shall be paid in money and in no other manner.

* to * added 1887, p. 356.

871. The mode of **submitting questions** to the people for any purpose authorized by law shall be as follows: The whole question, including the sum desired to be raised, or the amount of the tax desired to be levied, or the rate per annum, and the whole regulation, including the time of its taking effect, or having operation, if it be of a nature to be set forth, and the penalty of its violation, if there be one, is to be published for four weeks in some newspaper published in the county. If there be no such newspaper, the publication is to be made by being posted up in at least one of the most public places in each election precinct in the county, and in all cases the notices shall name the time when such question shall be voted upon, and the form in which the question shall be taken, and a copy of the question submitted shall be posted up at each place of voting during the day of election.

Water and paving bonds in cities can only be issued after vote. **25,** 503 (41 N. W., 450). Must be complied with in issuance of precinct bonds under provisions of ch. 58 of Laws 1885. **21,** 604 (33 N. W., 247). See **13,** 369 (13 N. W., 628).

872. When the question submitted involves the borrowing or expenditure of **money,** or issuance of bonds, the **proposition** of the question must be accompanied by a provision to levy a tax annually for the payment of interest, if any, thereof, and no vote adopting the question proposed shall be valid unless it likewise adopt the amount of tax to be levied to meet the liability incurred.

School bond proposition submitted under sec. 28, act of 1887, p. 599, need not contain provision for levying tax. **29,** 472 (45 N. W., 794). See **13,** 369 (13 N. W., 628); **6,** 53.

873. At the time specified in such notice a **vote** of the qualified electors shall be taken in each precinct, at the place designated in such notice. The votes shall be received, and returns thereof made, and the same shall be canvassed by the same officers and in the same manner as required at each general election.

See **10,** 60 (4 N. W., 514).

874. If it appear that two-thirds of the **votes** cast are in favor of the proposition, and the requirements of the law have been fully complied with, the same shall be entered at large by the county board upon the book containing the **record** of their proceedings, and they shall then have power to levy and collect the special **tax** in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the county board.

This means two-thirds of the total vote cast at said election. **26,** 521 (42 N. W., 421). Amended by implication by ch. 10, Laws 1889, so as to require but a majority vote. **27,** 765 (43 N. W., 1140).

875. Money raised by the county board in pursuance to the provisions of the preceding sections of this act is specially appropriated and constituted a **fund, distinct** from all others, in the hands of the county treasurer, until the obligation assumed be discharged.

876. On the trial of any **suit** in which a **county** be **interested,** the inhab-

itants of such county shall be competent **witnesses** and **jurors,** if otherwise competent and qualified according to law.

877. Upon the allowance of any claim or account against the county, the county board shall direct the county clerk to draw a **warrant** upon the county treasurer in payment thereof, such warrant to be signed by the chairman of the county board, countersigned by the county clerk, and sealed with the county seal, but the same shall not be delivered to the party until the time for taking an appeal has expired, and if such appeal be taken, then not until the same shall have been determined.

Treasurer should not register until after ten days. **23,** 432 (36 N. W., 809). Cited, **10,** 362 (6 N. W., 434); **9,** 461 (4 N. W., 63).

878. It shall be unlawful for the county board of any county in this state to issue any **warrants** for any amount exceeding the **aggregate** of 85 per cent of the amount levied by tax for the current year, except there be money in the treasury to the credit of the proper fund for the payment of the same; nor shall it be lawful for the county board to issue any certificate of **indebtedness** in any form in payment of any account or claim, nor to make any contracts for or to incur any indebtedness against the county **in excess** of the tax levied for county expense during the current year; nor shall any expenditure be made, or indebtedness be contracted to be paid out of any of the funds of said county in excess of the amount levied for said fund.

Amended and raised from 50 per cent to 75 per cent, 1881, p. 223; and to 85 per cent, 1883, p. 186. County board has no authority to audit claims, unless there are funds in the treasury, or taxes levied upon which a warrant can be drawn. **13,** 526 (14 N. W., 517). County board has no authority to issue warrants in excess of the limitation fixed in this statute. **10,** 30 (4 N. W., 377). Action upon county warrant cannot be brought immediately upon the receipt of warrant. Action not barred by statute of limitation. **1,** 384. See note to section 25, citing **12,** 32 (10 N. W., 406); see **9,** 451 (4 N. W., 53).

879. Each **warrant** shall **specify** the amount levied and appropriated to the fund upon which it is drawn, and the amount already expended of such sum.

880. Any **warrant** drawn after 75 per cent of the amount levied for the year is exhausted, and where there are **no funds** in the treasury for the payment of the same, shall not be chargeable as against the county, but may be collected by civil action from the county board making the same, or any member thereof.

Raised from 50 to 75 per cent, 1881, p. 223. Warrant drawn in excess of limit, county commissioners liable for. **9,** 453 (4 N. W., 53).

881. Before any **claim against** a **county** is audited and allowed, the claimant or his agent shall verify the same by his affidavit, stating that the several items therein mentioned are just and true, and the services charged therein, or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount claimed is due and unpaid after allowing just credits. All claims against a county must be filed with the county clerk. And when the claim of any person against a county is disallowed, in whole or in part, by the county board, such person may **appeal** from the decision of the board to the district court of the same county, by causing a written notice to be served on the county clerk, within twenty days after making such decision, and executing a bond to such county, with sufficient security, to be approved by the county clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant. *Upon the disallowance of any claim, it shall be the duty of the county clerk to notify the claimant, his agent or attorney, in writing, of the fact, within five days after such disallowance. Notice mailed within said time shall be deemed sufficient.

Former act required notice to be served on chairman of board. Amended, and all after * added 1885, p. 211. *All* claims against county must be submitted to county board, and the only mode of prosecuting an action on such claims is by an appeal from its decision. **13,** 295 (13 N. W., 623). Commissioners cannot be compelled by mandamus to *audit* an account, but, in a proper case, can be compelled to *act* upon it. **10,** 363 (6 N. W., 434). Injunction will not lie to restrain payment of claim by commissioners; remedy is appeal. **6,** 283. A demand for taxes illegally collected is a "claim" against the county. **28,** 813 (45 N. W., 53). A county is not liable in damages at common law, or under the Revised Statutes of 1866, for injuries caused by the breaking down of a public bridge which was caused by the negligence of the county commissioners. **10,** 552 (7 N. W., 269). Aggrieved party has a right to appeal to district court. **6,** 110. Claimant waives his right of appeal by accepting warrant for amount allowed. **12,** 60 (10 N. W., 539). Appeals for damages caused by location of a road should not be taken under this section, but under sec. 39 of chapter on Roads. **14,** 313 (16 N. W., 150), [ch. 18]. No specific form of judgment required. **8,** 442. A cause of action under sec. 71 of revenue law of 1869 is a claim against county; dismissal of appeal from action of board on such claim is a final adjudication thereof. **24,** 536 (39 N. W., 608). Cited and sustained. **10,** 31 (4 N. W., 377).

882. Any **taxpayer** may likewise **appeal** from the allowance of any claim against the county by serving a like notice within ten days and giving a bond similar to that provided for in the preceding section.

See **10,** 363 (6 N. W., 434).

883. The clerk of the board, upon such **appeal** being taken, and being paid the proper fees therefor, shall make out a complete **transcript** of the proceedings of the board relating to the matter of their decision thereon, and shall deliver the same to the clerk of the district court; and such appeal shall be entered, tried, and determined the same as appeals from justice courts, and costs shall be awarded thereon in like manner.

884. The provisions of this subdivision shall not be so construed as to prevent the county board from once **reconsidering** their action on any **claim** upon due notice to parties interested.

Cannot reconsider claim allowed before act took effect. **25,** 255 (41 N. W., 182).

885. Whenever a **tax** is levied for the payment of a specific debt, the amount of such tax collected shall be kept as a **separate fund** in the county treasury, and expended only in the liquidation of such indebtedness; *Provided,* That any surplus remaining in the treasury after full payment of such indebtedness shall be transferred to the general fund of the county.

886. A copy of the **field notes** of the original survey of each county by the United States shall be procured, and a **map of** the **county** shall be constructed in accordance therewith on a scale of not less than one inch to a mile, and laid off in townships and sections. Such map and field notes shall be deposited in the office of the county clerk, and be by him **preserved.** Whenever the boundaries of any county are changed, the necessary alteration in such map may be made, or a new map of the county may be made if the county board so direct.

887. All persons chargeable with money belonging to any county shall render their **accounts** to and settle with the county board at the time required by law, and pay into the county treasury any balance which may be due the county, take duplicate **receipts** therefor, and deposit one of the same with the clerk of the county within five days thereafter.

888. If any person thus chargeable shall **neglect** or refuse **to** render true accounts or **settle** as aforesaid, the county board shall adjust the accounts of such delinquent, according to the best information they can obtain, and ascertain the balance due the county, and may institute the proper action to recover such balance so found due.

889. In such case, the delinquent shall not be entitled to any commission, and shall forfeit and pay to the county a **penalty** of twenty per cent on the amount found due the county. Such penalty shall be added to the amount so found due,

and it shall be the duty of the court in which any action is brought to recover the same to include such penalty in any judgment which may be rendered against the delinquent in such action; such penalty, when collected, to be paid into the county treasury for the benefit of the school fund.

890. The board shall procure and keep a **seal,** with such emblems and devices as they may think proper, which shall be the seal **of** the **county,** and no other seal shall be used by the county clerk, except where the county clerk is *ex-officio* clerk of the district court, in which case he shall use the seal of said court in all matters and proceedings therein. The impression of said seal by stamp shall be a sufficient sealing in all cases where sealing is required.

891. The county **board** may, when they deem it necessary, **employ** an attorney to prosecute and defend all actions in which the county is a party or may be interested, and to advise such board upon any matter pending before them, but the compensation allowed such attorney shall not in any one year exceed the sum of one thousand dollars. [Repealed by implication. **31,** (47 N. W., 1050).

Under prior law county board had no authority to employ another than the district attorney to advise it. **12,** 249 (11 N. W., 298). Attorney employed for one year at $400, and retained for following year without agreement as to salary, can recover only $400, though he has stated in presence of members of board that he would not serve for that amount. **27,** 366 (43 N. W., 114).

892. The county board of any county, whenever the account or claim of any person against the county is presented to them for allowance, may, in their discrecretion, procure from the county treasurer a certificate of the amount of **delinquent** personal **taxes** assessed against the person in whose favor the account or claim is presented, and may **deduct from** any amount found due upon such account or **claim** the amount of such tax, and issue a warrant for the balance remaining.

893. For any delinquent personal **taxes** so set off and **deducted** from any such account or claim, the board shall issue an order to the county treasurer directing him to draw from the same fund out of which said account or claim should have been paid the amount of said delinquent taxes so set off or deducted, and apply the same upon the said delinquent personal taxes in **satisfaction** thereof; and the said treasurer shall, upon application, receipt therefor to the person whose taxes are so satisfied.

894. In any suit against a county, any **delinquent** personal **taxes** assessed against the person in whose favor the cause of action accrued may be **set off against** any amount claimed in such **action.**

895. No county **officer** shall in any manner, either directly or indirectly, be pecuniarily **interested in** or receive the benefit of any **contracts** executed by the county for the furnishing of supplies, or any other purpose; neither shall any county officer furnish any supplies for the county on order of the county board without contract.

896. Any county **officer violating** the provisions of the preceding section shall be deemed **guilty** of a felony, and upon conviction thereof shall be imprisprisoned in the penitentiary for a period not exceeding five years, or fined in any sum not exceeding two thousand dollars, or both imprisonment and fined as aforesaid.

897. The board of county **commissioners** in all counties having not more than one hundred and twenty-five thousand (125,000) inhabitants, shall consist of three (3) persons, and in counties having more than one hundred and twenty-five thousand (125,000) inhabitants, shall consist of five (5) persons; *Provided,* That in counties having less than one hundred and twenty-five thousand population which have five (5) commissioners when this act takes effect, the in-

cumbents of said office shall continue to hold and occupy such offices until the expiration of the terms for which elected; *Provided,* That the electors in any county containing less than one hundred and twenty-five thousand (125,000) inhabitants, may vote at any general election as to whether their county board shall consist of three (3) or five (5) commissioners. Counties under township organization voting to change to commissioner system, may vote at the same time as to the number of commissioners desired. Whenever, in counties not under township organization, a petition or petitions for the submission of the question, signed by not less than two hundred electors of the county, voting at the last general election, shall be filed in the office of the county clerk, not less than thirty (30) days before the date of any general election, it shall be the duty of said county clerk to cause said question to be submitted to the voters of said county, at such election, and give notice thereof in the general notice of such election. The forms of ballots shall be respectively: "For three (3) commissioners;" "For five (5) commissioners;" and the same shall be written or printed upon the regular ballots cast for officers voted for at such election, and shall be counted and canvassed in the same manner. If a majority of votes cast at said election on said proposition have written or printed thereon the words "For five commissioners," thereafter said county shall have five (5) commissioners, and if a majority of the ballots cast at said election have thereon written or printed the words "For three commissioners," thereafter the said county shall have three (3) commissioners. Ballots on which appear both "For three commissioners" and "For five commissioners," neither being stricken out, shall not be counted as cast on said proposition. The commissioners shall have the qualifications of electors, and shall be elected in their respective districts at the annual general election.

Amended 1887, p. 359; rewritten 1891, p. 225. Commissioners shall reside in the district from which elected; if they remove therefrom their office becomes vacant. 19, 501 (27 N. W., 723).

898. Each county not under township organization having not more than one hundred and twenty-five thousand (125,000) inhabitants, shall be divided into three **districts** numbered respectively one (1), two (2), and three (3), or into five districts as provided for in section fifty-three (53) [897], which shall be numbered respectively one (1), two (2), three (3), four (4), and five (5); and in counties having more than one hundred and twenty-five thousand (125,000) inhabitants, shall be divided into five districts, numbered respectively one (1), two (2), three (3), four (4), and five (5), and shall consist of two (2), or more voting precincts, comprising compact and contigious territory and embracing, as near as may be possible, an equal division of the population of the county, and not subject to alteration oftener than once in three (3) years; and one (1) commissioner shall be elected from each of said districts by the qualified electors of the district, as hereinbefore provided. The district lines shall not be changed at any session of the board unless all of the commissioners are present at such session; *Provided,* That in counties of one hundred and twenty-five thousand (125,000) inhabitants, or more, and in counties where a majority have voted for five (5) commissioners, it shall be the duty of the commissioners, or supervisors, of such county, at their first meeting after the publication of state or federal census, or after an election deciding to have five (5) commissioners, to divide said county into five (5) commissioners districts, as provided for in this bill; *Provided further,* That the three (3) commissioners of such county whose term of office will expire after said election shall continue to represent the districts in which, they shall reside, after the redistricting of such county, until the expiration of the terms for which they were elected; *And provided further,* That at the general election next after the division of a county into five (5) districts, one (1) com-

missioner shall be elected for each of the two (2) remaining districts. Of the two persons elected in such districts, the person receiving the highest number of votes shall hold his office for the term of three (3) years, and the person receiving the next highest number of votes shall hold his office for the term of two (2) years; and each commissioner elected thereafter, in pursuance of the provisions of this section, shall hold his office for three (3) years and until his successor is elected and qualified; *Provided*, That in counties having more than seventy thousand (70,000) and less than one hundred and twenty-five thousand (125,000) inhabitants, the county commissioners shall be elected by a vote of the entire county.

Rewritten 1887, p. 359. Amended 1891, p. 227.

899. At the first election held to choose the board of commissioners under this act in any county, the person having the highest number of votes shall continue in office for three years; the next highest, two years, and the next highest, one year; but if any two or more persons have the same number of votes, their **term** of office shall be determined by the board of canvassers, and each commissioner elected at the first general election, as herein provided, shall hold his office for three, two, and one years, as the case may be, and until his successor is elected and qualified, and each commissioner elected thereafter, in pursuance of the foregoing section, shall hold his office for three years, and until his successor is elected and qualified.

900. The county commissioners shall meet and hold **sessions** for the transaction of county business, at the court house in their respective counties, or at the usual place of holding sessions of the district court, on the second Tuesday in January, third Monday in June, and first Tuesday in October of each year, and may adjourn from time to time.

The commissioners must transact county business at the county seat, and cannot enter into contracts at any other place. 10, 179 (4 N. W., 959).

901. The county clerk shall have the power to call **special sessions** when the interests of the county demand it, upon giving five days' notice of the time and object of calling the commissioners together, by posting up notices in three public places in the county, or by publication in a newspaper published therein.

Commissioners not confined to business mentioned in the call. 5, 229.

902. When two only of the commissioners of the board shall attend, and shall be divided on any **question**, the decision thereof shall be deferred until the next meeting of the board, and then the matter shall be **decided** by a majority of the board.

903. **[Chairman shall sign warrants.]**—In counties having three (3) commissioners, the commisioner whose term of office expires in one (1) year shall be chairman of the board for that year; and in counties having five (5) commissioners, the board of commissioners, at its regular meeting in January of each year, shall elect a chairman of the board to serve for the ensuing year, and such chairman shall sign all warrants on the treasurer for money to be paid out of the county treasury.

Rewritten 1887, p. 360; amended 1891, p. 228.

904. Each board of county commissioners shall divide the county into convenient **precincts**; and, as occasion may require, erect new ones, subdivide precincts already established, and alter precinct lines. And whenever any portion of territory containing in the aggregate not less than one township of land, and not more than four townships lying contiguous, shall contain not less than fifteen voters, it shall be the duty of the county commissioners, on receipt of a petition signed by a majority of the legal voters therein, to constitute such portion of the territory a voting precinct.

The commissioners should divide the county into convenient precincts. 20, 302 (30 N. W., 57). Proposition to vote bonds. 6, 53.

905. When a **precinct** shall be **divided,** any justice of the peace or constable of the original precinct shall continue to act as such in the newly created precinct in which he may reside at the time of the division, the same as if the precinct had not been divided.

COUNTY SUPERVISORS.

906. The county boards of the several counties in this state that may adopt township organization shall be composed of the supervisors of the organized townships thereof, and the supervisors from cities of the first and second class and villages; such supervisors shall hold two regular **meetings** in each year at the county seat in their respective counties, for the transaction of general business as a board of supervisors. They may hold special meetings at such times as they may find convenient, and shall have power to adjourn from time to time as they may deem necessary. They may also hold such other meetings as are by law provided.

907. **Special meetings** of the board of supervisors shall be held only when requested by at least one-third of the members of the board, which request shall be in writing, addressed to the clerk of the board, and specifying the time and object of such meeting; upon reception of which request, the clerk shall immediately notify in writing each member of the board of the time and object of such meeting, and shall cause notice of such meeting to be published in some newspaper of the county, if any shall be published therein; *Provided,* That no business shall be transacted at any special meeting except such as is specified in the call.

908. The **regular meetings** of the board of supervisors in all counties having township organization shall be held on the second Tuesday of January and the first Tuesday after the second Monday in July.

Amended 1889, p. 76.

909. The board of supervisors at their first regular meeting of each year shall organize by choosing one of their number as **chairman,** who shall preside at all meetings of the board during the year; and in case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.

910. The supervisors shall severally lay before the board of supervisors, at the first regular meeting after election, their several **certificates of election,** which shall be examined by the board of supervisors, and if found regular shall be filed in the office of the county clerk.

911. In **addition to** the **powers** hereinbefore conferred upon all county boards, the board of supervisors shall have power to appropriate funds to aid in the construction of roads and bridges not exceeding two mills of the levy for the current year for general purposes, except by a vote of the people authorizing them to expend a greater amount; to change the boundaries of towns, and to create new towns as provided by law, to designate and give names thereto, and to fix the place of holding the first town meeting therein; and to change the name of any town upon the petition of a majority of the voters of said town.

912. Two-thirds of all the supervisors elected in any county shall constitute a **quorum** for the transaction of business, and all questions which shall arise at meetings shall be determined by the votes of a majority of the supervisors present, except in cases otherwise provided for.

Impeachment proceedings can be heard if two-thirds of the board are present. **18,** 422 (25 N. W., 587).

913. The board of supervisors shall sit with **open doors,** and all persons may attend their meetings.

914. Every **chairman** of the board of supervisors shall have power **to administer** an **oath** to any person concerning any matter submitted to the board, or connected with their powers and duties.

915. In order to insure uniformity in the keeping of town **records** and other matters pertaining to the duties of town officers, it shall be the duty of the board of supervisors to purchase for the use of the respective towns suitable books and blanks thereof, the **cost** in the first instance to be paid by warrant upon the county treasury, and the amount to be charged to the respective towns, and levied and collected with other town taxes.

916. Whenever the board of supervisors shall create a new **town** or change the **name** of an existing town, the proceedings in giving a name to such new town or changing the name of an existing town, shall be as follows: The proposed name to be given to such new town, or existing town, shall be filed in the office of the auditor of public accounts, there to be retained for at least one year; and the auditor of public accounts, at any time after the filing of such proposed name, shall, upon application of said board, grant his certificate stating that such proposed name, from information appearing in his office, has not been adopted by any city, town, village, or municipal corporation in this state; which certificate must be obtained by said board before any action whatever shall be taken by said board toward making such change of name; and all proceedings instituted in any court or other place, under a name changed, without complying with the provisions of this section, shall be held to be void and of no effect. If such name has been adopted elsewhere in the state, the auditor of public accounts shall so notify the board, whereupon another name shall be filed in his office, which shall there remain in a like manner as hereinbefore provided, and the certificate shall be issued by the auditor of public accounts immediately after such filing, stating that such name has not been elsewhere adopted; whereupon said board may proceed to make such change of name, and not before; and all proceedings pending, and all rights and privileges acquired in the name of such town, by such town, or by any person residing therein, shall be secured to such town or person, and such proceedings continued to final consummation in such name, the same as though the same had not been changed.

917. It shall be the duty of the county board of each organized county in the state of Nebraska to cause to be surveyed, by a competent surveyor, all **irregular** subdivided **tracts** or lots of land, other than regular government subdivisions, and cause the same to be **platted** on a scale of not less than ten (10) inches to the mile; *Provided, however*, That where any county has in its possession the correct field notes of any such tract or lot of land, a new survey shall not be necessary, but such tracts may be mapped from such field notes.

918. The said board shall cause duplicate **maps** to be made, on which said tracts or lots of land shall be accurately described by lines and numbered from one (1) up to the highest number of such tracts in each section, which numbers, together with the number of the section, town, and range, shall be distinctly marked on such maps. One of said maps shall be conspicuously hung in the office of the county clerk and the other in the office of the county treasurer.

919. The said board shall also cause to be entered in duplicate, in suitable books, to be provided for that purpose, the **field notes** of all such tracts of land within their respective counties, wherein shall be described each tract, according to survey, and each tract shall be therein numbered to correspond with its number on the maps. One of such books or field notes shall be **filed** in the office of the county clerk, and the other in the office of the county treasurer.

920. When the maps and books of field notes shall be filed as hereinbefore provided, the **description of** any tract or lot of **land** described in said maps, by number, section, town, and range, shall be a sufficient and legal description thereof, for revenue and and all other purposes.

921. All counties which have not been organized in the manner provided by law, or any **unorganized territory** in the state, shall be attached to the nearest organized county directly east, for election, judicial, and revenue purposes; *Provided*, That Sioux county shall be attached to Cheyenne county for all the purposes provided for in this section; *Provided further*, That if no county lies directly east of any such unorganized territory or county, then such unorganized territory or county shall be attached to the county directly south, or if there be no such county, then to the county directly north, and if there be no county directly north, then to county directly west of such unorganized territory or county.

See **22,** 538 (35 N. W., 409); **12,** 386 (11 N. W., 495); and note to sec. 10, art. VI of constitution, citing **12,** 380 (11 N. W., 494).

922. The county authorities to which any unorganized county or territory is attached shall exercise control over, and their **jurisdiction** shall extend to, such unorganized county or territory, the same as if it were a part of their own county.

12, 381 (11 N. W., 494).

923. If **two** or more organized **counties,** or portions thereof, lie **directly east** of any unorganized county, then the portions of territory of such unorganized county which lie either north or south of a line running directly west and in continuation of the boundary line between such organized counties shall be attached to the organized county directly east of such territory, for all purposes of this subdivision.

924. In all counties where the cost of furnishing the officers with books, blanks, and **stationery** shall exceed the sum of $200 per year, the supplies for such purposes shall be let in separate **contracts,** to the lowest competent bidder, who shall give bond for the faithful performance of his contract, with at least two good and sufficient sureties, residents of the state. The bond required by this section shall be approved by the county board, and the sureties therein shall justify in the same manner as sureties on official bonds.

May reject all bids, but if let must be to lowest bidder. **19,** 254 (27 N. W., 122).

925. It shall be the duty of the county clerk, on or before the first day of December, annually, to prepare separate **estimates of** the books, and blanks, and **stationery** required for the use of the county officers during the coming year, and which by law are not required to be furnished by the state, and during the first week in December he shall publish a brief advertisement in one newspaper published in his county, stating the probable gross number of each item of books, blanks, and stationery required by such county during the year following the first day of January next ensuing, and inviting bids therefor, which bids shall be filed with said clerk on or before the said first day of January.

926. The county board shall, at their first meeting in January in each year, open said bids and **award** the **contract** for the furnishing of all such books, blanks, and stationery as may be required by county officers to the lowest bidder competent under the provisions of this subdivision, and who complies with all its provisions; *Provided*, That the county board may reject any or all bids.

927. The **accounts for** books, blanks, and **stationery** furnished under said contract shall be audited and **paid** as other accounts against the county, and no county board or other county officer shall procure any such books, blanks, and stationery from any person other than the contractor or his assignee, during the existence of such contract, and no account therefor shall be paid by the county.

All bids must be filed with the county clerk on or before the first day of January. The commissioners cannot consider a bid filed thereafter. There must be distinct propositions for books, blanks, and stationery, and bids must be definite. A bid to furnish articles "at what it costs to lay them down" is too indefinite. **13,** 65 (12 N. W., 817). See **24,** 110 (37 N. W., 936).

Secs. 928 to 933. "An act to authorize counties to acquire real estate to build thereon **county buildings** and provide compensation therefor." 1879, p. 184. In force June 1.

928. That the county **board** shall have power to **acquire,** take, hold, and appropriate so much **real estate** as shall be necessary and convenient for the use of the county, to construct county buildings; *Provided,* That no appropriation of private property for the use of the county aforesaid shall be made until full and just compensation therefor be first made to the owner thereof.

929. The **damages** to be paid by a county for any real estate taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the county judge of said county as hereinafter provided.

930. In the event that damages cannot be agreed upon, the county judge of the county seeking to appropriate such real estate shall, upon application of the county board or the owner of the real estate, direct the sheriff of said county to summon **six** disinterested **freeholders** of said county, to be selected by said judge, and not interested in a like question, unless a smaller number is agreed upon by the said parties, whose duty shall be to inspect said real estate and **assess** the **damages** which said owner will sustain by the appropriation of his land to the county as aforesaid, and make **report** in writing to the county judge of said county, who, after certifying the same under his seal of office, shall transmit the same to the county clerk of said county for record, and the said county clerk shall file, **record,** and index the same in the same manner as is provided for the record of pleads [deeds] in this state, and such record shall have the like force and effect as the record of deeds in pursuance of the statute in such case made and provided; and if said county board shall, at any time before they enter upon said real estate for the purpose of constructing said county buildings, pay to said county judge for the use of said owner the same [sum] so assessed and returned as aforesaid, they shall thereby be authorized to construct and maintain their county buildings upon said premises; *Provided,* That either party may have the right to appeal from such assessment of damages to the district court of said county in which such land is situated, within sixty days after said assessment be filed with said county judge, and in case of such appeal the decision and finding of the district court shall be transmitted to [by] the clerk thereof, duly certified, to the county clerk, to be filed and recorded as hereinbefore provided in his office. But such appeal shall not delay the prosecution of the work on said county buildings, if such county commissioners shall first pay or deposit with said county judge the amount so assessed by said freeholders, and in no case shall said county board be liable for the costs on such appeal unless the owners of such real estate shall be adjudged entitled upon the appeal to a greater amount of damages than was awarded by said freeholders. The county board shall in all cases pay the cost of the first assessment; *Provided,* That either party may appeal from the decision of the district court to the supreme court of the state, and the money so deposited shall remain in the hands of the county judge until a final decision be had, subject to the order of the supreme court.

931. In case of death, absence, refusal, or neglect of any of said freeholders to act as **commissioners,** it shall be the duty of the sheriff of said county to fill **vacancies** by forthwith summoning disinterested freeholders of the county to act as such commissioners. Said freeholders, before entering upon the discharge of their duties, shall take and subscribe an **oath** honestly and truly to assess the damages which such owner or owners shall sustain by the appropriation of his lands to the county, which said oath shall be filed in the office of said county judge. Said appraisers shall each receive two dollars per day for their services, and the same shall be taxed in the bill of costs.

932. If upon the selection of a site for county buildings it shall be found necessary to acquire and appropriate the lands of any non-resident owner, the said county board shall give four weeks' notice to such owner, if known, and if not known, by description of such real estate by publication four consecutive weeks in some newspaper published in the county where such land is situated, or if none is published therein, then such notice shall be published for the same time in some newspaper of general circulation in such county, that the county board of such county have selected a site for the construction of county buildings, which site includes his or her lands, and that the same will be taken and appropriated for the purpose of the construction of county buildings, and if such owner shall not within thirty days thereafter apply to said county judge to have the damages assessed in the mode hereinbefore prescribed, said county board may proceed, as herein set forth, to have the damages assessed, subject to the same right of appeal as in case of resident owners, and upon the payment of the damages assessed to the county judge for such owner, the county board shall acquire all rights and privileges mentioned in this act.

933. This act shall in no way affect the power of the county board now possessed by law to purchase a site for the construction of county buildings, but is cumulative.

Sec. 934. "An act to transfer surplus county sinking and other funds to the county general fund." 1877, p. 214. In force June 1.

934. That the board of county commissioners of the several counties of the state may appropriate to the county general fund any county sinking fund in the county treasury not levied for the payment of any bonded indebtedness; also any county moneys from whatever source, excepting the moneys levied for school purposes, that remain on hand in the county treasury, and are no longer required for the purposes for which the same were levied.

County board can only transfer surplus of sinking fund that is left after paying the debt in full. 12, 256 (11 N. W., 307).

Sec. 935. "An act to authorize the transfer of certain county funds from one fund to another." 1883, p. 181. In force June 1.

935. The board of county commissioners of any county in the state of Nebraska shall have the power to transfer any unexpended balance or any portion thereof remaining in the county general fund at any time to any other county fund, when the interests of the county seem to demand such transfer; *Provided,* That in no case shall such transfer reduce the amount of said county general fund below the sum of two thousand ($2,000) dollars.

Secs. 936 to 939. "An act to authorize the county board of the several counties of this state to use the surplus general funds of the respective counties in purchasing food, fuel, and seed grain and feed for teams, and to distribute the same among the destitute and needy farmers of said counties, and providing the manner in which the same shall be distributed." 1891, p. 308. In force March 24.

936. That the county board of any county of this state shall have power and are hereby authorized to draw their warrants on the surplus general fund of the county that may be on hand and not otherwise disposed of, and use the money in the purchase of food, fuel, seed grain, and feed for teams for the benefit of the destitute farmers of such county, caused by crop failure in 1890.

937. That the county board shall sell the food, fuel, seed grain, and feed for teams, or any of the same, to such persons only as are engaged in agriculture, at a price not exceeding the actual cost thereof, and shall take the promissory note of the purchaser, payable to the county and due in three years from date, with interest at the rate of seven per cent per annum, payable annually, and which notes shall be held and collected by the county when due, and when collected the money shall be paid into the county treasury.

938. No farmer shall be permitted to purchase any of said food, fuel, seed grain, feed for teams until he shall first make affidavit that he is actually engaged in farming; that he is in destitute circumstances; that he has no food, fuel, or seed grain, as the case may be, and that he is in need of the same; or if he have any or a part of the above substance, to state the kind and quantity thereof. And shall also furnish the affidavit of two creditable witnesses of the township wherein such purchaser may reside, stating that he is a reputable citizen of said county and that verily they believe the statements contained in his affidavit are true.

939. That no farmer under the provisions of this act shall be allowed to purchase more food, provisions, or fuel than in the judgment of the county board is needful and proper. And no farmer shall be allowed more than the value of twenty-five dollars in seed grain to be selected by the purchaser, and no farmer shall be allowed more than fifty bushels of grain for feed for teams.

Sec 940. "An act to provide for the protection of land or other property from high water in certain cases." 1885, p. 213. In force June 5.

940. That whenever any portion of a county exceeding 320 acres in amount is put in peril of destruction by reason of the probable diversion of the channel of any river or water-course, and whenever a petition stating such fact, signed by twenty freeholders in the precinct, is filed with the county commissioners of said county, it shall be the duty of the said board of county commissioners to view said premises within the succeeding thirty days, and if upon actual view it shall appear that a portion of the county exceeding 320 acres is in actual peril of destruction, they may cause to be built any dam, embankment, or dike, or aid to such an extent as they may deem proper in the building of any dam, embankment, or dike that they may deem necessary for the protection of said land. The amount expended toward such improvements to be paid out of the general fund of the county.

Secs. 941 to 943. "An act authorizing board of county commissioners to publish certain proceedings and notices in German newspapers." 1879, p. 179. In force June 1.

941. That in counties in this state where a newspaper is published in the German, Swedish, and Bohemian languages, and the said newspaper has regular daily, tri-weekly, weekly circulation of fifteen hundred copies or more, and it shall be proven by the affidavit of the publisher or foreman thereof to the board of county commissioners in said county that the said paper has such a circulation, it shall be the duty of the county commissioners in said county to have published in said newspaper a report of all the proceedings of said board of county commissioners at each meeting; said report to be prepared by the clerk of said county and delivered to the publisher of said paper, or left at the office of said paper within two days after each meeting of said board of county commissioners. All advertisements of lands offered for sale by the county treasurer of said county shall be delivered to the publisher of said German, Swedish, and Bohemian papers, or left at the office of said paper for publication on the same day when the said advertisement shall be inserted in any paper or papers printed in the English language and published in said county.

942. The rate charged for said publication of said reports, notices, and advertisements mentioned in section one of this act shall be the same in said papers printed in the German language as is provided by law to be paid for legal advertisements in papers in this state printed in the English language.

943. If any county in this state shall contain two or more papers printed in the German language, and the majority of the county commissioners shall be satisfied upon proper proof that two or more of said papers have an actual and

regular circulation of fifteen hundred copies or more, then it shall be the duty of the board of commissioners at their first meeting in January of each year to elect by ballot the German paper published in said county which shall publish the reports, notices, and advertisements as aforesaid during the year next ensuing after said meeting.

Sec. 944. "An act to confer upon boards of county commissioners power to cause the removal of explosive and dangerous material." 1879, p. 66. In force June 1.

944. The board of county commissioners of each organized county shall have the power to abate or remove any deposit of nitro-glycerine, explosive oils, gunpowder, or other dangerous explosive or inflammable material which is so deposited or situated that if ignited it would, in their opinion, endanger the life, or buildings, or property of any person; and to cause by the order of said board that the owner or owners of such material remove the same; and in case the owner or owners of such material or the person or persons having charge of the same do not remove the same to some place designated or agreed to by said board, within ten days after personal service of such notice to remove the same, each and every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars nor less than twenty-five dollars.

Secs. 945 to 1006. "An act to provide for township organization, to define the rights, powers, and liabilities of towns, and the duties, powers, and compensation of the officers thereof." 1883, p. 202. In force June 1.

945. At any general election that may be held in the several counties of the state, the qualified voters in any county may vote for or against township organization in such county.

946. The county commissioners, on petition of fifty or more legal voters, shall cause to be submitted to the voters of the county the question of township organization under this act, by ballot, to be written or printed, or partly written or partly printed, "For township organization," or "Against township organization," the vote to be canvassed and returned in like manner as votes for county officers.

947. If it shall appear by the returns of said election that a majority of the legal voters of said county voting at said election are for township organization, then the county so voting for its adoption shall be governed by and subject to the provisions of this act on and after the first day of the meeting of the county supervisors, as hereinafter provided.

Commissioners continue to act until board of supervisors organize. 20, 177 (29 N. W., 307).

948. For the purpose of temporary organization, each voting precinct shall be a township until otherwise ordered by the county board. And at the general election at which the question of adoption of township organization is submitted, as aforesaid, *the electors of each precinct may choose one supervisor, one town clerk, one town treasurer, one assessor, three judges and two clerks of election, and one overseer of highways in each road district; and if it appears that a majority of the legal votes cast have therein the words "For township organization," the county clerk shall publish the fact, and such officers, having duly qualified, shall hold their offices respectively until the next general election for township officers, and until their successors shall be elected and qualified; *Provided*, That at such election, in precincts having more than three thousand inhabitants, there shall be elected one additional supervisor; in precincts having five thousand inhabitants there shall be elected two additional supervisors, and for every additional two thousand inhabitants there shall be elected one additional supervisor—the population to be ascertained by the last federal or state census preceding the election. In case of a failure to elect proper town officers at said election, then such county shall not be governed by this act until the first Tuesday in January following the next general election after the

adoption of township organization, and it shall be the duty of the county commissioners, before said next general election, to divide the county into townships and name the same in the same manner as the county board are directed to do by the provisions of this chapter; * *Provided further*, That in wards of cities of the first and second class, whose limits are co-extensive with precincts, the electors thereof shall only choose supervisors, assessors, and judges and clerks of election.

*** to * added 1887, p. 378.**

949. In case a majority of the legal votes cast at said election shall be "For township organization," and the electors have chosen supervisors in a majority of the precincts in the county as provided in the preceding section, there shall be held a special **meeting of** the **newly elected** county **board,** commencing on the fifteenth day after such election, at the county seat, and when such board shall have met and organized, the power of the county commissioners of such county shall cease and their offices become vacant. At such special meeting the county board may transact such county business as may be required to be transacted before the next regular meeting of the board, and shall proceed to divide such county into towns or townships, making them conform as near as practicable to townships according to the government survey. When fractions of townships are caused by the county lines not being in accordance with the surveyed townships, then the county board may attach such fractions to adjoining towns when the number of inhabitants or amount of territory in such fraction shall not be sufficient for a separate town. When a surveyed township shall have too few inhabitants for a separate organization, then such township may be added to some adjoining town, or such township may be divided between two or more towns for the time being; and when creeks or rivers so divide a township as to make it inconvenient for transacting town business, then such creek or river may be made the town boundary, and the town fractions so formed may be disposed of as other fractional townships. No city of over six thousand inhabitants shall be included within the corporate limits of any township, but the territory occupied by such city of over six thousand inhabitants shall constitute a town by the name of such city for the purpose of town meetings and organization as hereinafter provided.

Amended and much of the section omitted 1887, p. 380. A supervisor is a township officer. Resignation should be addressed to town clerk. How vacancy filled. **26,** 580 (42 N. W., 729); **21,** 225 (31 N. W., 802).

950. The county board shall designate the **name** of each **town,** and may change the name of any town upon a petition of a majority of the voters of said town, in the manner provided by law.

951. The county **clerk** shall **record** in a book kept for that purpose the names and boundaries of each town as designated by the county board, and shall forthwith forward an abstract thereof to the auditor of public accounts of this state, who shall make a record of the same.

952. The county **clerk** shall, at least twenty days before the first Tuesday in April, **designate** some central and convenient place in each town for holding of the first town **meeting.**

953. The county clerk shall thereupon make out **notices** stating the time (which shall be the first Tuesday in April thereafter) and place for holding the first town meeting. Such notice shall be **posted** by the sheriff in some public place in said town at least fifteen days before the holding of the meeting.

954. The first town meeting shall be **conducted** in the manner as other town meetings hereinafter provided for.

955. The corporate **name** of each town shall be the town of (name of town),

and all acts done by the town and all actions by or against the town, shall be in its corporate name.

956. Every town shall have corporate capacity to exercise the **powers** granted thereto, or necessarily implied, and no others. It shall have power: *First*—To sue and be sued. *Second*—To acquire by purchase, gift, or devise, and to hold property, both real and personal, for the use of its inhabitants, and again to sell and convey the same. *Third*—To make all such contracts as may be necessary in the exercise of the powers of the town.

957. The **electors** present at the annual town meeting shall have **power**: *First*—To make all orders for the sale, conveyance, regulation, or the use of the corporate property of the town that may be deemed to be conducive to the interests of its inhabitants. *Second*—To take all necessary measures and give directions for the exercise of their corporate powers. *Third*—To provide for the institution, defense, or disposition of suits at law or in equity in which the town is interested. *Fourth*—To take such action as shall induce the planting and cultivation of trees along the highways in such towns, and to protect and preserve trees standing along or on highways. *Fifth*—To construct and keep in repair public wells, and to regulate the use thereof. *Sixth*—To prevent the exposure or deposit of offensive or injurious substances within the limits of the town. *Seventh*—To make such by-laws, rules, and regulations as may be deemed necessary to carry into effect the powers herein granted, and to impose such fines and penalties, not exceeding $20 for one offense, as shall be deemed proper, except when a fine or penalty is already allowed by law, such fine or penalty to be imposed by any justice of the peace of the town where the offense is committed. *Eighth*—To direct the raising of money by taxation for the following purposes: 1st. For constructing or repairing roads and bridges within the town to the extent allowed by law. 2d. For the prosecution or defense of suits by or against the town, or in which it is interested. 3d. For any other purpose required by law. 4th. For the purpose of building or repairing bridges over streams dividing said town from any other town. 5th. For the support of the poor within the town; *Provided*, That when the county board of any county shall have established a poor-house under any statute law of the state, the support of the poor shall be provided for by the county board, and no taxes for that purpose shall be voted by the electors at town meetings except sufficient to provide temporary relief. 6th. For the compensation of town officers at the rate allowed by law, and when no rate is fixed, for such amount as the electors may direct. *Ninth*—To guard against the destruction of property in said town by prairie fire. *Tenth*—To restrain, regulate, or prohibit the running at large of cattle, horses, mules, asses, swine, sheep, and goats, and determine when such animals may go at large, if at all; *Provided*, That all votes thereupon shall be by ballot. *Eleventh*—To authorize the distraining, impounding, and sale of cattle, horses, mules, asses, sheep, goats, and swine, for penalties incurred and costs of proceedings; *Provided*, That the owner of such animals shall have the right to redeem the same from the purchaser thereof at any time within one month from the day of sale, by paying the amount of the purchaser's bid, with reasonable cost for their keeping, and interest at the rate of seven per cent per annum.

Prior to act of 1887 duty of each town, not of county board, to maintain bridges. **24**, 55 (37 N. W., 684).

958. In case any **town** in any county wherein township organization has been or may be adopted, shall **refuse** or neglect to organize and elect town officers at the time fixed by law, it shall be the **duty of** the **board** of supervisors of the county, upon the affidavit of any freeholder, resident of said town, filed in the office of

the county clerk, setting forth the facts, to proceed at any regular or special meeting of the board and appoint the necessary town officers for such town, and the persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same power and be subject to the same duties and penalties as if they had been duly chosen by the electors of the town.

21, 225 (31 N. W., 802).

959. Whenever it shall be made to appear to the board of supervisors that the town **officers** appointed by them or by any preceding board, as provided in the foregoing section, have **failed to qualify** as required by law, so that such town cannot become organized, the board of supervisors may annex such town to any adjoining town, and the said town so annexed shall thereafter form and constitute a part of such adjoining town.

960. The citizens of the several towns of this state, qualified by the constitution to vote at general elections, shall assemble and hold annual **town meetings** in their respective towns on the first Tuesday in April, at such place in such town as the electors thereof at their annual town meetings shall from time to time appoint. And notices of the time and place of holding such meeting, after the first meeting, shall be given by the town clerk by posting up written or printed notices in three of the most public places in said town, at least ten days prior to said meeting.

961. The electors of each town shall have **power** at their annual town meetings to elect such town officers as may be required to be chosen to direct the institution and defense of suits at law or in equity in which such town may be a party in interest; to direct such sum to be raised in such town for the support and maintenance of roads and bridges, or for any other purpose provided by law as they may deem necessary; to take measures and give directions for the exercise of their corporate powers; to impose penalties upon persons offending against any such regulations; and to make rules, regulations, and by-laws necessary to carry into effect the powers herein granted.

962. It shall be the duty of the town clerk to cause all **by-laws,** rules, and regulations of the town, within twenty days after their adoption, to be published by posting in three public places of the town, or by inserting once in any newspaper published in the county; but all such by-laws, rules and regulations, shall take effect and be in force from the date of their adoption, unless otherwise directed by the electors of the town.

963. **Special** town **meetings** shall be held **when** the supervisor, town clerk, and justice of the peace, or any two of them, together with at least twelve freeholders of the town, shall in writing file in the office of the town clerk, a statement that a special meeting is necessary to the interests of the town, setting forth the objects of the meeting; and the town clerk, or in his absence the supervisor, shall post up notices in five of the most public places of the town, giving at least ten days notice of such special meeting, setting forth the objects of the meeting as contained in the statement filed as aforesaid; the place of holding special town meetings shall be at the place where the last annual town meeting was held; but in case such place may be found inconvenient, the meeting may adjourn to the nearest convenient place; *Provided,* That not less than one-third of the electors of a town shall constitute a quorum for the transaction of business at any special town meeting.

964. The electors at special town meetings, when properly convened, shall have full **power** to fill vacancies in any of the town offices when the same shall not already have been filled by appointment; to provide for raising money for repairing highways or buildings, or repairing bridges in case of emergency, and to direct the building or repairing thereof; to act upon any subject within the power

of the electors at any annual town meeting which was postponed at the preceding annual town meeting, for want of time, to be considered at a future special town meeting, but special town meetings shall have no power to act upon any subject not embraced in the statement and notice calling the same.

26, 588 (42 N. W., 729).

965. The **electors** present at any time between the hours of nine and ten o'clock in the forenoon of the day on which there is an annual or a special town meeting shall be called to order by the town clerk if present; if not present, then the voters may elect by acclamation one of their number chairman; they shall then proceed to choose one of their number to act as **moderator** of such town meeting.

966. Before the moderator of any town meeting shall enter upon the duties of his office, he shall take an **oath** faithfully and impartially to discharge the duties of such office, such oath to be administered by the town clerk or other proper officer.

967. The town **clerk** last before elected or appointed shall be the clerk of the town meeting, and shall keep faithfully minutes of its proceedings, in which he shall enter at length every order or direction and all rules or regulations made by such meeting, and the same shall be signed by himself and the moderator.

968. If the town **clerk** be **absent,** then some other suitable person shall be chosen by the electors present and shall act as clerk of the meeting.

969. All questions upon motions made at town meetings shall be determined by a majority of the electors **voting,** and the presiding officer shall ascertain and declare the result of the votes upon each question.

970. When the **result** of any vote shall upon such declaration be **questioned** by one or more of the electors present, the moderator shall make the vote certain by causing the voters to rise and be counted, or by dividing off.

971. No person shall be a **voter** at any town meeting unless he shall be **qualified** to vote at general elections and has been for the last ten days a resident of the town wherein he shall offer to vote.

972. If any person offering to **vote** at any election, or upon any question arising at such town meeting, shall be **challenged** as an unqualified voter, the presiding officer shall proceed thereupon in like manner as the judges of general elections are required to do, adapting the oath to the circumstances of the town meeting, and the laws in force in regard to false swearing and illegal voting at general elections shall apply to false swearing and illegal voting at town meetings.

973. Town **meetings** shall be kept **open** from the time of opening in the morning until six o'clock in the afternoon, unless a majority of the voters present vote to adjourn at an earlier hour, if the business before the meeting shall have been concluded.

974. The **minutes** of the proceedings of every town meeting, subscribed by the moderater and clerk of such meeting, shall be filed in the office of the town clerk within two days after such town meeting.

975. Every person chosen or appointed to the **office** of supervisor, town clerk, assessor, town treasurer, or overseer of highways, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe before some authorized person an **oath** or affirmation to faithfully and impartially perform the duties of his office as prescribed by law, and shall cause a certificate of the same to be **filed** in the office of the town clerk.

976. If any **person** chosen or appointed to any or either of the town offices

shall **neglect** to take and subscribe such oath, and cause a certificate thereof to be filed, as above required, such neglect shall be deemed a refusal to serve.

977. All town officers, except justice of the peace and constables, shall **hold their offices** for **one year,** and until their successors are qualified.

978. It shall be the **duty of** every **person retiring** from a town office to deliver to his successor in office all the records, books, papers, moneys, and property belonging to such office held by him.

979. The town **treasurer** of each town shall give **bond** to the town in the sum of $5,000, or double the amount of money that may come into his hands, to be fixed by the town board. Whenever it shall be ascertained that such bond has been forfeited, suit in the name of such town on said bond may be brought by any resident freeholder of such town.

980. The **supervisor** shall **prosecute** in the name of his town, or otherwise as may be necessary, for all penalties given by law to such town or for its use, and for which no other officer is specially directed to prosecute; and no person shall be disqualified from being a **juror** in a suit by or against a town by reason of his being an inhabitant of such town.

981. The supervisor of each town (who shall be *ex-officio* overseer of the poor) shall **attend** the regular **meetings of** the **board** of supervisors of the county, and every adjourned or special meeting of said board of which he shall have notice; he shall receive all accounts which may be presented to him against the town; he shall lay before the board of supervisors such copies of entries concerning moneys to be raised in his town as shall be delivered to him by the town clerk.

Town liable on contract of supervisor for support of poor; such liability not avoided by failure to levy taxes. 27, 490 (43 N. W., 252).

982. He shall keep a just and **true account** of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose at the expense of the town, and said book shall be delivered to his successor in office.

983. On Tuesday preceding the annual town meeting he shall **account to** the town **board** for all moneys received and disbursed by him in his official capacity.

984. At every such accounting, the **town board,** or a majority of them, shall enter a **certificate** in the supervisor's official book of accounts, showing the state of his accounts at the date of certificate.

985. If any **supervisor** shall refuse or shall willfully **neglect** to perform any of the **duties** of his office contained in the preceding sections of this act, he shall forfeit to the town, for the benefit of school fund, the sum of $50, to be recovered by a suit at law or in equity, and be disqualified to act as the supervisor of said town.

986. **Assistant** supervisors, and supervisors elected in the cities of the first and second class, shall have no **power** or duties as town officers, but shall be members of the county board of their respective counties, and shall have and enjoy the same powers and rights as other members.

987. The **town clerk** of each town in this state shall have the custody of all records, books, and papers of the town, and shall file all certificates of oaths and other papers required by law to be filed in his office; and shall have power to administer the oath of office to all town officers; and it is hereby made the duty of the town clerk to administer all oaths which may be required in the transaction of any township business in the town where he may be clerk; *Provided,* That nothing herein shall be so construed as to deprive any other person qualified by law from administering said oaths.

988. The town clerk shall **transcribe** in the book of records of his town the

minutes of the proceedings of every town meeting held therein, and he shall enter in his book every order or direction, and all rules and regulations of any such town meeting.

989. The town clerk shall **deliver** to the supervisor, before the next regular meeting of the board of supervisors of the county, certified **copies of** all **entries** of votes for raising money made since the last regular meeting of said board.

990. Certified **copies** of all papers filed in the office of the town clerk, and books of record shall be **evidence** in all courts in like manner as the original.

991. In each town the supervisor, town clerk, and justices of the peace of the town shall constitute the **town board,** and shall examine the accounts of the supervisor and overseer of highways for moneys received and disbursed by them, and shall require all town officers to account to them for any and all money received or disbursed by them in their official capacity, and shall examine and audit all charges and claims against the town; and the compensation of all town officers, except the compensation of supervisors for county services. In case of the absence of either or any of said officers, or their failure to attend any meeting of the board, those attending may associate with them the assessor of the town in place of any absentee, who shall act for the time being as member of such board.

Neither error nor appeal lies from action of board in rejecting a claim. **27,** 490 (43 N. W., 252).

992. The **board** shall **meet** at the town clerk's office for the purpose of examining and auditing the town accounts three times in each year, as follows: On the Tuesday next preceding the annual town meeting, and on the Tuesday next preceding each of the regular meetings of the board of supervisors of the county, and at such other times as the interests of the town may require.

993. The **accounts** so **audited,** and those rejected, if any, shall be delivered with the certificates of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of all persons; they shall also be produced by the town clerk at the next annual town meeting, and shall be there publicly read by him.

994. **Orders for** the payment of **money** shall be drawn on the town treasurer, and signed by the town clerk, and countersigned by the supervisor. *All **claims** and charges against the town, duly audited and allowed by the town board, shall be paid by orders so drawn. No order shall be drawn on the town treasurer in excess of seventy-five per cent of the amount of taxes levied for the current year on the property of said town subject to be expended by said town, unless the money is in the treasury of said town to pay the order so drawn on presentation. When any order drawn as aforesaid is presented to the town treasurer for payment, and is not paid for want of funds, the town treasurer shall endorse on said order, "Presented and not paid for want of funds," and shall note in a book of registration, to be kept by him for that purpose, the fact of the presentation and non-payment of said order, and said order shall draw **interest** at seven per cent per annum from the date of presentation until there are funds sufficient in the hands of said treasurer to pay the same, after paying all orders drawn against such tax levy presented prior thereto, and said orders shall be paid in the order of their presentation and registration. The money received by the town treasurer as the proceeds of the tax levied in any year shall be applied first in payment of the orders drawn against said levy, and such levy shall be deemed specifically appropriated, so far as the same may be lawfully expended by said town, to the payment of orders drawn against said levy.

All after * added 1885, p. 232.

995. The board shall require all **accounts** presented to be **verified** by affidavit, setting forth that the same are correct and just and unpaid.

996. Said board shall make a **certificate,** to be signed by a majority of said board, specifying the **value of** the **claim** and to whom the amount is allowed, and shall cause such certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of all persons, and a statement of the aggregate amount shall be delivered to the supervisor of the town, to be by him laid before the board of supervisors at their regular annual meeting.

Last sentence of original section omitted 1885, p. 233.

997. The following shall be deemed **town charges,** to-wit: The compensation of town officers for services rendered their respective towns; contingent expenses necessarily incurred for the use and benefit of the town; the moneys authorized by the vote of any town meeting for any town purpose, and every sum directed by law to be raised for town purposes.

998. The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed by law for raising revenue. * The rate of **taxes** for town purposes shall not exceed, for roads, two mills on each dollar of the valuation; for bridges, two mills on each dollar of the valuation; for all other purposes, three mills on each dollar of the valuation. And if the electors at the annual town meeting fail to vote a tax to pay the town charges hereinbefore specified, or the town board fail to certify up to the county board the amount of tax voted, if any, by a town meeting, then the county board shall have power and it shall be the duty of such county board to levy upon the taxable property in said town a tax sufficient to pay all such town charges.

All after * added 1885, p. 233. Failure to levy taxes does not avoid town's liability on supervisor's contract for support of poor. **27,** 486 (43 N. W., 252).

999. The following town officers shall be entitled to **compensation** as hereinafter specified: Town treasurer, three per centum on the amount collected by him as taxes, excepting on school taxes, on which taxes he shall receive one per centum; the town clerk and supervisor shall each receive two dollars per day for each day actually and necessarily employed in attending to the duties of their respective offices; *Provided,* That the town clerk shall receive fees for the following services and not a per diem: For serving notices of election as required by law, twenty-five (25) cents each; filing papers, ten (10) cents each; posting notices as required by law, twenty-five (25) cents each; for recording any order or instrument of writing authorized by law, five cents for each one hundred words; for copying any record in his office and certifying the same, ten cents for each one hundred words, to be paid by the person applying for the same; and for copying by-laws for posting or publication, five cents for each one hundred words.

Provisions as to treasurer inserted 1885, p. 234.

1000. The members of the **town board** shall be entitled to two dollars per day each for their services while actually engaged in their duties as such board.

Amended 1885, p. 235.

1001. **No** justice of the peace or town officer shall be entitled to any **fee** or compensation from any individual elected or chosen to a town office for administering to him the **oath** of office.

1002. Whenever any controversy or cause of **action** shall exist **between** any **towns** of this state, or between any town and individual or corporation, proceedings may be had and suits brought, either at law or in equity, for the purpose of trying and finally settling such controversies. In all such suits and proceedings, the town shall sue and be sued by its corporate name, except where town officers shall be authorized by law to sue in their name of office for the benefit of the town.

1003. In all legal proceedings against the town by name, the first process and all other writs or proceedings required to be served shall be served on the supervisor of the town, and whenever any suit or proceeding shall be commenced against the town, it shall be the duty of the supervisor to attend to the defense thereof, and lay before the electors of the town at the first town meeting a full statement of such suit or proceeding for their consideration and direction.

1004. All judgments recovered against a town or against town officers, in actions prosecuted by or against them in their name of office, shall not be collected by execution, but shall be a town charge, and when levied and collected shall be paid to the person or persons to whom the same shall have been adjudged.

1005. The board of supervisors shall meet at such times as may be provided by law, and each member thereof shall be allowed, when actually employed, the sum of three dollars per day and mileage at the rate of five cents per mile for each mile necessarily traveled, and no more, as compensation for his services and expenses in attending the meetings of the board or any other business for the benefit of the county; *Provided*, That mileage shall only be allowed for one round trip to each member for each regular or special session of the county board, but mileage shall be allowed as hereinbefore provided for all necessary travel by committees; *Provided*, That nothing herein contained shall be so construed as to allow the supervisor more than two dollars per day while actually employed as member of his township board.
Amended 1889, p. 84.

1006. None of the provisions of this act in regard to meeting of electors of their respective towns and their powers shall apply to towns whose limits are coextensive with cities of the first and second class, but such cities and the inhabitants thereof shall continue to be governed by the laws specially applicable thereto, with such power only as conferred by law or election in the choosing of supervisors, assessors, judges, and clerks of election and other county officers.

Secs. 1007 to 1014. "An act to provide for the discontinuance of township organization in any county, to adjust the affairs of and provide a revenue to pay the indebtedness of the towns and establish a temporary county organization." 1885, p. 235. In force June 5.

1007. Any county of the state of Nebraska which may have adopted township organization, or that may hereafter adopt the same pursuant to the constitution and any statute of the state, shall discontinue the same whenever the majority of the electors of said county voting on the question of such discontinuance shall so decide in the manner herein provided.

1008. Whenever a petition or petitions for a submission of the question of the discontinuance of township organization to the voters of his county, signed by not less than one-third of the number of electors of the county voting at the last general election, shall be filed in the office of the county clerk not less than thirty days before the date of any general election, it shall be the duty of said county clerk to cause said question to be submitted to the voters of said county at such election and give notice thereof in the general notice of such election.

1009. The forms of ballots shall be respectively "For continuance of township organization" and "Against continuance of township organization," and the same shall be written or printed upon the regular ballots cast for officers voted for at such election, and shall be counted and canvassed in the same manner.

1010. If it shall appear from the returns of said election that a majority of the votes cast on the question are against the continuance of township organization, then such organization shall cease to exist as soon as a board of county commissioners are appointed and qualified, as hereinafter provided.

1011. When township organization shall cease in any county, as provided by this act, the office of county commissioner, which became vacant by reason of its adoption, is hereby restored, and such county is hereby divided into commissioner districts, with the same boundaries and comprising the same territory as such districts had when township organization was adopted.

1012. On the first Saturday after the first Tuesday of January following the election at which township organization shall be voted to be discontinued, the county commissioners of such county, for the purpose of temporary organization under this act, shall be appointed by the county clerk, treasurer, and county judge of said county, and their successors shall be elected at the next general election in the manner provided by law in cases of the first election of a board of commissioners in any county.

1013. The board of county commissioners, appointed as herein provided, shall be the legal successors of the board of supervisors in said county, and the county in which township organization shall be discontinued; and such board of county commissioners shall thereafter be governed by the laws that shall govern counties not under township organization, and in the same manner that said county would have been governed had not such organization been adopted.

1014. Where township organization shall be discontinued in any county, it shall be the duty of the town clerk in each town in said county, as soon as the board of county commissioners are appointed and qualified, to deposit with the county clerk of the county all town records, papers, and documents pertaining to the affairs of such town, and to certify to him the amount of indebtedness of such town outstanding at the time of such discontinuance, and the board of county commissioners shall have full and complete power to settle all the unfinished business of the towns as fully as might have been done by the town itself, and dispose of any and all property belonging to such towns, the proceeds of which, after paying all indebtedness, shall be disposed of by the board of county commissioners of such county for the benefit of the taxable inhabitants thereof, by their crediting all unexpended balances of said towns to such fund or funds as they in their discretion shall deem for the best interest of such county, and it shall be their duty, at such time as shall be provided by law, to levy a tax upon the taxable property of such towns, to pay any unliquidated indebtedness it may have outstanding.

CHAPTER 11.—COURTS.

Courts of Impeachment.

Secs. 1015 to 1068, except 1037 to 1040 and sec. 1059, which are additional acts inserted. "An act to amend chapter 13 of the Revised Statutes of 1866, entitled "Courts." 1879, p. 82. In force March 1.

1015. All **impeachments** of state officers shall be **tried** before the supreme court, except the impeachment of any judge of said court, and the impeachment of a judge of the supreme court shall be tried before all the district judges of the state.

1016. A court of impeachment shall have **power** to proceed with a trial only when two-thirds of all the members thereof are in attendance, but any less number shall have power to adjourn to any reasonable time.

1017. A court of impeachment shall make such **rules** and orders as in its discretion shall be best adapted to a full, fair, and impartial investigation of the charges made and to the promotion of substantial justice.

1018. The **clerk** of the supreme court shall act as the clerk of the court of impeachment, and the court may appoint a short-hand **reporter,** and such officers shall each receive such an allowance as the court of impeachment may authorize to be by them reported for the consideration of the legislature at its next session.

1019. Whenever the court of impeachment in any way interferes with the business of any other court or county of the state, that of the court of impeachment shall take **precedence.**

1020. When the court of impeachment is composed of the district judges of the state they shall elect one of their number to act as the **presiding judge** of said court; in all other cases the chief justice shall preside, and the clerk of said court shall keep a full **record** of each day's proceedings, in a book to be specially provided for that purpose, and of which book the clerk of the supreme court shall always be the custodian, and each day's proceedings shall be signed by the judge presiding.

1021. The written **opinions** of any court of impeachment shall be reported in the volume of supreme court reports issued after the adjournments of said court.

1022. An impeachmen tof any state officer shall be tried, notwithstanding such officer may have resigned his office, or his **term** of office has **expired**; and if the accused person be found guilty, judgment of removal from office, or disqualifying such officer from holding or enjoying any office of honor, profit, or trust in the state, or both, may be rendered as in other cases.

1023. An impeachment against any state officer shall be tried, and judgment of removal from office, or of disqualification to hold office, may be rendered, notwithstanding the **offense** for which said officer is tried occurred **during** a **term** of office immediately **preceding.**

Supreme Court.

1024. The supreme court shall consist of three **judges,** a majority of whom shall be necessary to constitute a quorum or pronounce a decision.

1025. The judge of the supreme court having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the **chief justice,** and as such shall preside at all terms of the supreme court; and in case of his absence, the judge having in like manner the next shortest term to serve shall preside in his stead.

1026. No **person** shall be **eligible** to the office of judge of the supreme court unless he be at least thirty years of age and a citizen of the United States; nor unless he shall have resided in this state at least three years next preceding his election; nor unless he shall have been regularly admitted as an attorney in this state, and remained as an attorney in good standing at the bar thereof.

1027. The supreme court shall have original **jurisdiction** in cases relating to the revenue, civil cases in which the state shall be a party, mandamus, *quo warranto*, and *habeas corpus*, and shall have appellate and final jurisdiction of all matters of appeal and proceedings in error which may be taken from the judgments or decrees of the district courts, in all matters of law, fact or equity, where the rules of law or the principles of equity appear from the files, exhibits, or records of said court to have been erroneously determined.

Does not give the court original jurisdiction to vacate a judgment in a criminal case. **25**, 347 (41 N. W., 249.)

1028. **Terms** of the supreme court shall be held at the capitol, beginning on the first Tuesday in January and the Third Tuesday in September of each year.

Original act read first Tuesday in January and July. Amended 1889, p. 422.

1029. The judges of the supreme court, or a majority of them, are hereby authorized to appoint and hold a **special term** of said court at such time as they may designate, for disposing of the unfinished business of any general term of said court, and may appoint one special term of said court in any one year for general or special purposes.

1030. If a quorum is not in attendance on the first day of any term, the fact shall be entered on the journal by the clerk, and the court shall stand adjourned until the next day, and like proceedings shall be had, from day to day, until the fourth day, and should there still be **no quorum**, the court will stand adjourned until the next term in course. No proceedings shall in any manner be affected by such adjournment, or failure to hold a court, but shall stand continued to the next term.

1031. The **reporter** of the supreme court, who, under the provisions of section 8, article VI of the constitution, acts as clerk thereof, shall keep his office at the capital, shall be the custodian of the seal of said court, perform the **duties** devolving upon him by law, and be subject to the orders of the court. He shall receive an annual salary of $1,500, payable as the **salary** of other state officers is paid.

1032. The **opinions** of the court on all questions brought before them, as well as such motions, collateral questions, and points of practice as they may think of sufficient importance, shall be reduced to writing, filed with and recorded by the clerk of the court. All dissenting opinions must be written, filed, and recorded in the same manner.

1033. It shall be the duty of the reporter of the supreme court to prepare the opinions of said court for publication as fast as they are delivered to him, and when sufficient material is accumulated to form a volume of not less than six hundred pages, he shall cause the same to be printed, stereotyped, and bound in a good and substantial manner, equal to volume four of said **reports.** He shall deliver one thousand copies of each volume, with the stereotype plates thereof, to the auditor of public accounts, who shall draw his warrant in payment thereof, at the rate of two dollars and twenty-five cents ($2.25) per volume. The copyright of each volume shall be entered by said reporter for the benefit of the state, and all papers relating thereto shall be filed and recorded in the office of the secretary of state. The title of said volume shall be "Nebraska Reports," which, with the number of the volume, shall be printed on the back of each volume, and the reports of every case must show whether either, and if so which, judge dissented from the decision therein.

The salary of reporter is in full of all work done by him in preparing the MS. for the printer. 15, 697.

1034. The supreme court **reports** shall be deposited in the state library. Copies thereof shall be **distributed** to each judge of the supreme, district, and county court, to each state and territorial library, to each officer of the executive department of this state, and to each judge of the United States district and circuit courts of this state; and to the library of congress, two copies. The reporter shall be permitted to distribute such a number of copies as he sees fit, not exceeding ten of each volume, for notice in law periodicals published in the United States. The balance of said reports shall be sold as called for at the rate of $2.50 per volume. The money arising from such **sales** shall be paid into the treasury and constitute a library fund to be expended in the purchase of books for the benefit of the library. The accounts for such purchases shall be audited and paid as other accounts against the state are audited and paid, warrants therefor to be drawn on the library fund. Exchanges of said volumes may also be made with book publishers for books of equal value to the amount of said exchanges at the rate per volume hereinbefore provided for.

1035. Whenever the edition of any volume of reports, the copyright and plates of which are owned by the state, shall become exhausted, it shall be the duty of the reporter to cause to be printed from the stereotyped plates of such volume, and bound in uniform style with the first edition thereof, five hundred **additional volumes**, to be sold as herein provided. Upon the delivery of such subsequent edition the auditor of public accounts shall draw his warrants on the treasury in payment thereof at the rate of $1.25 per volume.

1036. The court may also appoint not exceeding two **bailiffs**, who shall receive the compensation allowed by law, to be paid as other claims upon the state treasury are paid, upon a certificate of the clerk of the supreme court stating the number of days of service rendered by said bailiffs. Such bailiffs shall have power to serve any process issuing out of said court in the exercise of its original jurisdiction, and shall receive the same fees as sheriffs for similar services.

Secs. 1037 to 1040. "An act to provide for **stenographers** or clerks **for** the **judges** of the supreme court, to define their duties, and to provide for their salaries." 1887, p. 381. In force March 31.

1037. **Each** of the judges of the supreme court of this state are authorized and empowered to **appoint** a stenographer, or clerk, to assist them in the mechanical or clerical duties of their office.

1038. Each stenographer or clerk, so appointed, shall **reside** in the same city with the judge appointing him, and perform such clerical work as may be assigned to him.

1039. Each stenographer or clerk shall receive **compensation** at the rate of four ($4) dollars per day while actually employed, payable from the treasury, out of the general fund.

1040. For carrying into effect the provisions of this act, the auditor is hereby authorized and directed to draw his warrant on the general **fund**, upon the presentation of the proper vouchers, approved by the judges of the supreme court, for the amounts named therein.

District Courts.

1041. No **person** shall be **eligible** to the office of district judge in any of said districts unless he is also eligible to the office of supreme judge.

1042. The district courts shall have and exercise general, original, and appellate **jurisdiction** in all matters, both civil and criminal, except where otherwise provided.

All presumptions are in favor of the jurisdiction of district court. **17,** 98 (22 N. W., 76). Courts of equity and common law jurisdiction not necessarily limited in exercise thereof by statutory powers. **27,** 283 (43 N. W., 118); **27,** 137 (42 N. W., 889).

1043. A **special term** may be ordered and held by the district judge in any county in his district, for the transaction of any business, if he deem it necessary. In ordering a special term he shall direct whether a grand or petit jury, or both, shall be summoned.

9, 163 (2 N. W., 378).

1044. The district **judges** may **interchange,** and hold each other's courts; and whenever it shall appear by affidavit, to the satisfaction of any district judge in the state, that the judge of any other district is unable to act, on account of sickness, interest, or absence from the district, or from any other cause, the judge to whom application may be made shall have power to make any order, or do any act relative to any suit, judicial matter, or proceeding, or to any special matter arising within the district where such vacancy or disability exists, which the judge of such district court could make or do; and the order or act shall have the same effect as if made or done by the judge of such district.

May grant temporary injunction by making proper showing. **7,** 386.

1045. The **clerk** of each district court shall keep a **record** of the proceedings of the court, under the direction of the judge. He shall, if the business of the court does not prevent, make up the record of each day's proceedings before the opening of court on the next day, and the first business of each day, after the first, shall be read in open court, and if found correct shall be signed in open court by the judge. The proceedings, including those of the last day of the session, shall be made up and signed by the judge before the final order of adjournment is made.

Where indictment found but no entry on journal made, subsequent court may order entry made conforming to facts. **6,** 281. May be changed at a subsequent term to correspond with the fact. Notice of application for must be served. **28,** 785 (45 N. W., 51). The supreme court has no authority over the ministerial officers of the district court. **25,** 224 (41 N. W., 184).

1046. The district court may, by rule, **compel** an **inferior court** or board to allow an appeal, or to make or amend records according to law, either by correcting an evident mistake or supplying an evident omission.

1047. If the **judge** does **not appear** on the day appointed for holding the court, the clerk shall make an entry thereof in his record, and adjourn the court until the next day, and so on until the fourth day, unless the judge appear.

1048. If the judge does not appear by five o'clock in the afternoon of the fourth day, the court shall stand **adjourned** till the next regular term.

1049. If the **judge** is **sick,** or for any other sufficient cause is unable to attend court at the regularly appointed time, he may, by a written order, direct an adjournment until a particular day therein specified, and the clerk shall, on the first day of the term, or as soon thereafter as he receive the order, adjourn the court as therein directed.

1050. No recognizance, or other instrument or proceeding, shall be rendered invalid by reason of there being a failure of the term, but all **proceedings** pending in court shall be **continued** to the next regular or special term, unless an adjournment be made as authorized in the last preceding section.

1051. In case of such continuances or adjournments, **persons recognized** or bound to appear at the regular term, which has failed as aforesaid, shall be held bound in like manner, to appear at the time so fixed, and their sureties (if any) shall be liable, in case of their non-appearance, in the same manner as though the term had been held at the regular time, and they had failed to make their appearance thereat:

1052. Upon any **final adjournment** of the court all business, not otherwise disposed of, shall stand continued generally.

GENERAL PROVISIONS.

1053. All judicial **proceedings** must be **public**, unless otherwise specially provided by statute.

1054. All courts have power to **administer oaths** connected with any matter pending before them, either by any judge, justice, or clerk thereof, or by any other person appointed for that purpose by them.

1055. A **judge** or justice is **disqualified** from acting as such, except by mutual consent of parties, in any case wherein he is a party, or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding, and such mutual consent must be in writing and made a part of the record.

1056. **No** court can be opened, nor can any judicial **business** be transacted, **on** Sunday or on any legal **holiday, except**—1st. To give instructions to a jury then deliberating on their verdict. 2d. To receive a verdict or discharge a jury. 3d. To exercise the powers of a single magistrate in a criminal proceeding. * 4th. To grant or refuse a temporary injunction or restraining order.

All after * added 1889, p. 379. Where legal holiday falls on Sunday, the next Monday is not a holiday except as to commercial paper. **23,** 735 (37 N. W., 637). Adjournment of the court to, and opening it on, Thanksgiving day, no step in the case being taken on that day, is not cause for new trial. **14,** 546 (16 N. W., 898). A replevin writ cannot be served on Sunday. **16,** 653 (21 N. W., 406). Case set for a legal holiday stands continued to the next day. **23,** 548 (37 N. W., 310). When verdict in justice's court is returned on Sunday, justice should immediately render judgment upon it. **13,** 288 (13 N. W., 626).

1057. A **judge** of the district court may sit **at chambers** anywhere within his district for the purpose of,—1. Granting, dissolving, or modifying temporary injunctions. 2. Confirming judicial sales. 3. Discharging attachments. 4. Hearing proceedings in "aid of execution." 5. Hearing application for sale of personal property held under attachment. 6. Hearing application for the appointment of a receiver or to discharge one already appointed, or to modify the order appointing one. 7. Hearing an application for additional security. 8. Hearing an application for mandamus or habeas corpus. 9. To discharge such other duties or to exercise such other powers as may be conferred upon a judge in contradistinction to a court. 10. For the purpose of receiving a plea of "guilty" from any person charged with a felony, and passing sentence thereon, upon reasonable notice to the prosecuting attorney.

May grant mandamus at chambers, in his district, where right is clear. **24,** 265 (38 N. W., 752). Under this section a judge could not award a writ of mandamus in vacation. **10,** 476 (6 N. W., 763). But see act of 1881.

1058. In **hearing** any matters mentioned in subdivisions 2, 3, 4, 5, and 7, of the preceding section, the same shall be had **in** the **county** where the action is pending or the property is situated.

Sec. 1059. "An act to give to the several judges of the judicial districts of Nebraska certain powers when sitting in chambers anywhere within their respective judicial districts." 1881, p. 226. In force June 1.

1059. That any **judge** of the district court may sit **at chambers** at any time and place within his judicial district, and while so sitting shall have the **power**—1. To grant, dissolve, or modify temporary injunctions. 2. To discharge attachments.

3. To hear and determine application for writ of mandamus, and applications for writ of habeas corpus. 4. To discharge such other duties or to exercise such other powers as may be conferred upon a judge in contradistinction to a court. 5. To receive a plea of "guilty" from any person charged with a felony and passing sentence thereon, upon reasonable notice to the prosecuting attorney.

See **24**, 265 (38 N. W., 752).

COURT COMMISSIONER.

1060. The **judge** of each judicial district shall **appoint** some suitable person in each county of his district as a court commissioner, who shall hold his office during the pleasure of such judge. Such commissioner must be an attorney at law in good standing, and must have been engaged in practice as such attorney at least five years, and have practiced in this state at least two years. He shall, before entering upon the duties of his office, give a bond and take the oath of office required by law to be given and taken by county judges; and shall receive the same fees for like services. He shall perform such duties and exercise such powers as are imposed or conferred upon him by the laws of the state.

TERMS OF COURT.

1061. The **judges** of the district court shall, on the first day of January of each year, **fix** the **time** of holding terms of court in the counties composing their respective districts, during the ensuing year, and cause the same to be published throughout the district, if the same can be done without expense. The clerk of each district court shall note on the bar docket of each term the time so fixed for holding court in his county. The terms shall be so fixed as not to conflict with the time fixed by rules of the supreme court for the hearing of causes therein from said districts. The clerk of the supreme court shall, before the first day of January of each year, notify each district judge of the times fixed by the supreme court for the hearing of causes from his district. All terms of the district court shall be held at the county seat in the court house, or other place provided by the county board. *Terms of court may be held at the same time in different counties in the same judicial district, by the judge of the district court thereof, if there be more than one, and upon request of the judge or judges of such court, any term in such district may be held by a judge of the district court of any other district of the state. When necessary, the district court sitting in any county may be continued into and held during the time fixed for holding such court in any other county within the district, or may be adjourned and held beyond such time.

All after * added 1885, p. 242.

CLERKS OF THE DISTRICT COURT.

1062. The **clerk** of the supreme court, and of the several district courts in this state, shall have power to appoint **deputies**; and deputies of the district clerks shall be residents of the counties in and for which they act. Such deputies shall be sworn faithfully to perform the duties of their office, before they enter upon those duties.

1063. Every **clerk** appointing a deputy under the provisions of this chapter shall be **liable** for all the official acts of said deputy clerk.

SHORT-HAND REPORTER.

1064. There shall be appointed within and for each of the judicial districts of this state, by the district judge, a **stenographic reporter** who shall be well skilled in the art of stenography, and capable of reporting the oral proceedings had in court verbatim, *and said reporter or his deputy shall not be allowed to practice law in the district court within and for the district he is appointed during the tenure of his office as such stenographer.

All after * added 1889, p. 421.

1065. The said reporter shall take the **oath** required to be taken by judicial officers, shall hold his office during the pleasure of the district judge, and receive an annual **salary** of $1,500, to be paid by the state as the salary of other officers is paid.

1066. [**Duties.**]—The said reporter shall attend all terms of the district court held within and for the district for which he is appointed, and shall make a stenographic report of all oral proceedings had in such court, including the testimony of witnesses, with the questions to them, verbatim, and any further proceedings or matter when directed by the presiding judge so to do; but the parties may, with the consent of the judge, waive the recording by such reporter of any part of the proceedings herein required to be taken; this shall not include arguments to the jury. And whenever, during the progress of the cause, any question arises as to the admissibility or rejection of evidence or any other matter causing an argument to the court, such argument shall not be recorded by the reporter, but he shall briefly note the objection made and the ruling of the court thereon, and any exceptions taken by either party to such ruling.

1067. The said reporter shall keep and maintain an **office** within the district for which he shall be appointed, and shall keep and preserve in his said office all stenographic reports made by him as in this subdivision required. Such **records** shall be the property of the state, and upon the termination of his office the said reporter shall deliver the same to his successor in office.

1068. It shall be the duty of such reporter to **furnish,** on the application of the district attorney or any party to a suit in which a stenographic record of proceedings has been made, a long-hand **copy** of the proceedings so recorded, or any part thereof, for which he shall be entitled to receive, in addition to his salary, a **fee** of five cents per hundred words, to be paid by the party requesting the same, except where such copy is required by the district attorney on the part of the state, in which case the reporter shall furnish such copy without the payment of any fee; *Provided also,* That in all criminal cases wherein, after conviction, the defendant shall make an affidavit that he is unable, by reason of his poverty, to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct the reporter to make such copy without the payment of any fee. It shall be the duty of the reporter to deliver such long-hand copy of the proceedings therein within forty days from the final adjournment of the term at which the judgment is rendered, to the party demanding it.

If a party, without his fault, is deprived of his bill of exceptions by reason of the reporter's failure to prepare a transcript of the testimony in time, a new trial will be granted. **10,** 451 (6 N. W., 762). One convicted of felony must pay for his transcript. 8, 24.

Secs. 1069 and 1070. "An act to permit the appointment of **deputy** stenographic **reporters** in the several judicial districts of the state of Nebraska." 1883, p. 319. In force June 1.

1069. The stenographic **reporters** within and for each of the judicial districts of this state may severally, each with the consent of the judge of the district in which he acts, **appoint** as deputy a person well skilled in the art of stenography, and capable of reporting the oral proceedings had in court verbatim.

1070. A deputy reporter so appointed shall take the **oath** required to be taken by judicial officers, and may perform the duties of the reporter as provided in the Compiled Statutes of Nebraska, chapter 19, "Courts" [ch. 11], and the reporters of the court shall **pay** for the services of such deputy.

Sec. 1071 to 1075. **"An act to amend section 58 of chapter 14, General Statutes."** 1875, p. 76. In force April 1.

1071. It shall be the duty of the judges of the several district courts, in all cases, both civil and criminal, to reduce their charge or **instructions to the jury to writing,** before giving the same to the jury, unless the so giving of the same is waived by the counsel in the case in open court, and so entered in the record of said case; and either party may request instructions to the jury on points of law, which shall be given or refused by the court. All instructions asked shall **be in writing.**

This requirement can be waived by the parties. **18,** 559 (26 N. W., 368). Instructions should be given with reference to testimony of each case, and attention of jury directed to question at issue. **5,** 189. Instruction asked which states the law correctly should be given; should be clear and definite and not tend to prejudice. **6,** 321. Has no reference to rulings on points which arise during progress of trial. **27,** 117 (42 N. W., 898). Oral instructions must be reduced to writing and filed with clerk before submission to jury. **23,** 654 (37 N. W., 590). Instructions not applicable to issues made by pleadings should be refused. **13,** 428 (14 N. W., 164); **6,** 159; **6,** 340; **6,** 498; **1,** 312. If one part of instruction misstates the law it will not be cured by another paragraph which states it correctly. **13,** 378 (14 N. W., 171). When an instruction has a tendency to confuse or mislead a jury, it is ground for a new trial. **12,** 177 (10 N. W., 700). Instructions not warranted by the evidence, held erroneous. **11,** 275 (9 N. W., 86). Undue prominence should not be given to one branch or item of evidence, by particular mention, to the disparagement of the rest. **11,** 213 (7 N. W., 853). The assumption by the court of a fact of which there is no evidence, is error. **11,** 114 (7 N. W., 850). When the evidence produced by plaintiff would not support a verdict in his favor, a nonsuit is proper. **11,** 186 (7 N. W., 737). Where there is no evidence in favor of plaintiff, court may direct jury to find for defendant. **11,** 201 (8 N. W., 431). An instruction which in effect withdraws a case from the jury, can not be sustained where there is testimony that should be submitted to them. **11,** 231 (9 N. W., 58). An instruction, though correct as an abstract proposition of law, which submits to the jury a question not in issue, or which has a tendency to mislead, should not be given. **13,** 314 (14 N. W., 406). Whether the facts be disputed or undisputed, if different minds may honestly draw different conclusions from them, the case is one for the jury. **11,** 332 (9 N. W., 50). Instruction must not assume the possible existence of a state of facts which the jury has no right to find from the evidence. Instruction must not be ambiguous and uncertain and liable to lead jury astray. **11,** 253 (9 N. W., 55). Where, under the issue made by the pleadings, proof of a material fact devolves upon the defendant, and no testimony is offered on either side, it is error for the court to instruct the jury to find for defendant. **11,** 394 (9 N. W., 558). Not error for a court to refuse to instruct upon the matter of a prisoner's sanity when there is no evidence tending to show he is insane. **11,** 410 (9 N. W., 552). Judge should not give undue importance to rights of one party; should avoid expressing his opinion as to the effect of the evidence, and should not assume that there is a conflict in the evidence when there is none. **12,** 374 (11 N. W., 462). An erroneous charge will not reverse judgment when made on a point entirely out of case made by evidence, and the verdict can be supported by the proof made, but where instructions not called for by the evidence are given, and which are misleading to the jury, judgment will be reversed. **1,** 319. It is error to submit the question of materiality to a jury. **5,** 225. Instructions erroneous, too general. **22,** 492 (35 N. W., 216). Instructions are a part of the record and need not be preserved by bill of exceptions. **15,** 23 (16 N. W., 833); **15,** 129 (16 N. W., 762). If jury not properly instructed on law, verdict will be set aside. **22,** 815 (36 N. W., 465). Instructions must be construed together. **22,** 607 (35 N. W., 871); **19,** 71 (26 N. W., 593). It is error to give instructions without filing them with the clerk, or marking them "given" or "refused," but such error is waived if not excepted to at the time. **10,** 443 (6 N. W., 764); **11,** 459 (9 N. W., 638). Under indictment for murder. **8,** 89. Criminal trial—insanity. **4,** 470. In case of felony, if instruction had a tendency to prejudice the minds of the jury a new trial will be granted, though no exception taken. **4,** 530. No exception taken, no foundation for a review. **7,** 222. See **2,** 334; **5,** 214; **20,** 386; **21,** 615 (33 N. W., 209).

1072. If the court refuse a written instruction, as demanded, but give the same with a **modification,** which the court may do, such modification shall not be by interlineation or erasure, but shall be well defined and shall follow some such characterizing words as "changed thus," which words shall themselves indicate that the same was refused as demanded.

Instructions need not be in the very words requested, if given in other words as favorable. **1,** 120. Not error to refuse instructions substantially the same as those given. **5,** 418 ; **4,** 554.

1073. The **court must read** over all the instructions which it intends to give, and none others, **to the jury,** and must announce them as given, and shall announce as refused, without reading to the jury, all those which are refused, and must write the words "given," or "refused," as the case may be, on the margin of each instruction.

Error to give instructions which tend to confuse the jury. **8,** 431. Instruction marked "Asked for by defendant; refused," was read to the iury and allowed to be taken by them. Held, not reversible error. **14,** 341 (15 N. W., 737). Failure to read, reversible error. **27,** 388 (43 N. W., 123). Omission of word "given" from margin held not to vitiate instruction. **27,** 170 (42 N. W., 1054).

1074. If the giving or refusal be excepted to, the same may be without any stated reason therefor, and all instructions demanded, as well as all instructions given to the jury by the court on its own motion, must be plainly and legibly written in consecutively **numbered paragraphs,** and filed by the clerk before being read to the jury by the court; and such instructions shall be preserved as part of the record of the cause in which they were given.

Right to except to instructions waived unless taken at time of giving of instructions. **3,** 353; **6,** 284. General exception insufficient. **24,** 300 (38 N. W., 780). If not objected to, right to have instructions numbered will be waived. **4,** 288.

1075. No **oral explanation** of any instruction authorized by the preceding sections shall, in any case, be allowed, and any instruction or charge, or any portion of a charge or instructions, given to the jury by the court and not reduced to writing, as aforesaid, or a neglect or refusal on the part of the court to perform any duty enjoined by the preceding sections, shall be error in the trial of the case, and sufficient cause for the reversal of the judgment rendered therein.

This does not include oral explanations reduced to writing and filed. **25,** 591 (41 N. W., 399).

County Courts.

Secs. 1076 to 1110. "An act concerning the organization, powers, and jurisdiction of probate courts." 1873. In force March 3. G. S., 263.

1076. That there is hereby established, in each organized county in this state, a **probate court,** which shall be held at the county seat by the probate judge of such county, and shall be a court of record. Such court shall be deemed to be always open, and any cause, matter, or proceeding may be proceeded with therein at any time after the giving of notice or service of process in the mode prescribed by law. And the proceedings and determinations of such court heretofore had or made in any cause, matter, or proceeding, at any time other than at a regular term of such court, as heretofore prescribed by law, shall be as valid and effectual, for all purposes, as if had or made at such regular term.

1077. County judges in their respective counties shall have and exercise the ordinary powers and **jurisdiction** of a justice of the peace, and shall in civil cases have concurrent jurisdiction with the district court, in all civil cases in any sum not exceeding one thousand dollars, exclusive of costs, and in actions of replevin where the appraised value of the property does not exceed that sum, and the provisions of the code of civil procedure, relative to justices of the peace, shall, where no specified provision is made by this subdivision, apply to the proceedings in all civil actions prosecuted before said county court; *Provided,* That county courts shall not have jurisdiction: I. In any action for malicious prosecution. II. In any action against officers for misconduct in office, except where like proceedings can be had before justices of the peace. III. In actions for slander and libel. IV. In actions upon contracts for the sale of real estate. V. In any matter wherein the title or boundaries of land may be in dispute, nor to order or decree the sale or partition of real estate.

Word probate changed to county, and limit of jurisdiction raised to $1,000, 1883, p. 220.

County court formerly had jurisdiction in civil cases only to the amount of $500; and where court is without jurisdiction of the subject-matter, parties cannot confer jurisdiction by consent. **14,** 518 (16 N.W., 845). County courts have jurisdiction to recover damages for assault and battery where amount sought to be recovered does not exceed $500 ($1,000 now). **12,** 474 (11 N.W., 730. County judges shall have the ordinary jurisdiction of justice of the peace. Judgment can only be set aside when it was obtained by fraud, partiality, or undue means. **6,** 302. In cases involving over $200, county court has the power of district court; under $200, only those of a justice. **15,** 12 (16 N. W., 758). A cause of action cannot on appeal to district court be so amended as to claim more than $1,000. **18,** 639 (26 N. W., 464). No jurisdiction to set aside deed obtained by false representations. **27,** 137 (42 N. W., 889.) County courts have no jurisdiction to naturalize foreigners. **7,** 474.

1078. The courts of probate in their respective counties shall have **exclusive jurisdiction** of the probate of wills, the administration of estates of deceased persons, and the guardianship of minors, insane persons, and idiots; *Provided*, No **judge** of probate shall act in any case or matter where he is next of kin to the deceased, nor where he is legatee or devisee under a will, nor where he is named as executor or trustee in a will, or is one of the subscribing witnesses thereto, nor where he is related to any party in interest in any case before him, by consanguinity or affinity, or has such an **interest** therein as would exclude him from acting as a juror in such case or matter, nor where he has acted as attorney or counsel in any case or matter before him.

This disqualification does not apply to such acts as filing papers, etc. **17,** 523 (23 N.W., 524).

1079. They shall have **power**— I. To hear and determine claims and set-offs in the matter of estates of deceased persons. II. To hear and determine questions of applications for, and to grant and issue letters of administration, testamentary, and of guardianship, and revoke the same. III. To take the probate of wills. IV. To cause to be taken, to receive, file, and record all inventories, sale, and appraisement bills of the estates of deceased persons. V. To require executors, administrators, and guardians to exhibit and settle their accounts, and account for the estates and property that have come into their possession as such. VI. To appoint commissioners to partition personal estate. VII. To authorize guardians to sell and convey or mortgage the personal estate of their wards, to provide for their wants, education, and support.

1080. If it shall appear to any such court, by the application, under oath, of any party interested in the **bond of** any **executor,** administrator, or guardian appointed by such court, that there is reasonable doubt as to the solvency or sufficiency of the securities upon any such bond, such court shall cause such executor, administrator, or guardian to be ordered to show cause why he shall not execute a new bond in the premises, with surety to be approved by such court, as provided by law.

1081. If, upon the hearing of any such matter, the court shall require a **new bond** with sureties, and such executor, administrator, or guardian shall fail to comply with the order of the court, he shall be removed from his said trust, and his letters revoked, and another executor, administrator, or guardian, as the case may be, appointed in his place.

1082. It shall be the duty of the probate judge, in each county, to hold a regular **term of** the probate court at his office at the county seat, commencing at nine o'clock A. M. on the first Monday of each calendar month, for the trial of such civil actions brought before such court as are not cognizable before a justice of the peace. Such regular term shall be deemed to be open without any formal adjournment thereof until the third Monday of the same month, when all causes not then finally determined shall be continued by such court to the next regular term; but such courts shall be deemed to be always open for the filing of papers and issuance of process in civil actions, and for the purpose of taking and entering judgment by confession.

The *third* Monday is a term day. **10,** 529 (7 N. W., 276). Statute directory—cases may be tried at any time by agreement of parties. **9,** 394 (2 N. W., 739). Court may hear cases out of term time by agreement. **17,** 696 (24, N. W., 389). And where court continued a case out of the term to a legal holiday it goes over to the next term. **17,** 697 (24 N. W., 425). Not necessary to state that the court had been regularly adjourned from day to day until case finally disposed of. **5,** 228. Sufficiency of judgment. **7,** 479. Leave to amend pleadings in open court, notice to adversary not necessary. **8,** 445.

1083. [**Proceedings.**]—In all cases commenced in said courts wherein the sum exceeds the jurisdiction of a justice of the peace, it shall be the duty of the county judge to issue a summons, returnable on the first day of the next term of said court, if there be ten days intervening between the issuance of the summons and the first day of the term, and if not, then to be made returnable on the first day of the next term thereafter, which summons shall be directed and delivered to the sheriff or any constable of said county, and the sheriff or constable shall serve the same upon the defendant as in other civil cases, at least ten days before the return day thereof. When the summons has not been served ten days before the first day of the term, the cause shall stand continued until the next regular term of said court, and shall then stand for trial, without further notice to the defendant.

Limit of jurisdiction formerly $100, 1883, p. 221. If amount claimed does not exceed $100 ($200 now), a summons should be issued and served same as before a justice of the peace. **12,** 475 (11 N. W., 730). In granting new trial, county court is governed by same rule as a justice and must grant the same, if at all, within four days from the time of entering judgment. **12,** 479 (11 N. W., 738).

1084. **Action in replevin.**—In all actions in replevin, the summons shall be in like form, and be returnable within the like time as in similar actions before justices of the peace, but if, upon a return of the writ, it appears that the appraised value of the property taken thereon exceeds the jurisdiction of a justice of the peace, and does not exceed the jurisdiction of the county court, such action shall stand continued, as of course, to the next regular term of said court, and shall then be disposed of as other causes during such term; but if it appears that the appraised value of the property in such action exceeds the jurisdiction of the county court, then such action, on the return of the writ, shall be forthwith certified to the district court.

Amended 1883, p. 221. Summons should be returnable not more than twelve days from date **9,** 108 (2 N. W., 227).

1085. **Bill of Particulars.**—In all civil actions in the county court, where the amount claimed exceeds the jurisdiction of a justice of the peace, the plaintiff, his agent or attorney, shall, before the summons is issued therein, file in such court a petition, setting forth, in ordinary and concise language, his demands; and the defendant shall also, on or before the first day of the term at which the cause stands for trial, file in such court his answer containing any set-off or other defense he may have. Such petition shall be verified in like manner as a petition is required to be verified in the district court, and when so verified, no other or greater proof shall be required to entitle the plaintiff to judgment upon default than in actions in the district court.

Amended 1883, p. 222. Sufficiency of petition in county court. **18,** 112 (24 N. W., 442). See **20,** 506 (31 N. W., 74).

1086. **Pleadings.**—In actions before said court, where the amount claimed exceeds the jurisdiction of a justice of the peace, motions and demurrers shall be allowed, and the rules of practice concerning pleadings and processes in the district court shall be applicable, so far as may be, to pleadings in the county court.

Amended 1883, p. 222. Leave to amend petition instanter, defendant not entitled to extension of time. **8,** 445. County court has power to vacate and modify its own judgments during the term. **17,** 50 (22 N.W., 71).

1087. If no answer is filed on or before the first day of the term, in any action to be tried during such term, the plaintiff may have the **default** of the defendant entered, and may proceeed to judgment on any succeeding day during the term, upon proving his cause of action.

1088. Either party may demand a **jury** for the **trial** of any cause pending in the probate court, wherein the amount claimed exceeds one hundred dollars; but such demand must be made in writing and entered on the docket on or before the filing of the answer in such cause.

Bill of exceptions allowed only in case tried by jury. **3**, 341. To entitle one to bill of exceptions trial must be had to jury. **7**, 127; **7**, 244. Demand for jury must be made on or before filing answer. **12**, 86 (10 N. W., 552).

1089. Upon the filing of such **demand for** a **jury**, the probate judge shall cause a jury to be selected and summoned in the same manner as is provided for selecting jurors in civil actions before justices of the peace.

1090. The probate judge shall, on the first day of each term, or as soon thereafter as may be, prepare [a] **calendar** of the causes standing for trial at such term, placing the causes upon such calendar in the order in which the same are numbered on the docket, and setting the causes for trial, in such order, upon convenient days during such term; and the provisions of this code relative to the trial docket in the district court shall, so far as they are in their nature applicable, apply to such calendar.

1091. **Arrest and attachment.**—Orders for arrest and for attachments of property may issue in actions brought under this chapter, but when the demand in such action exceeds the jurisdiction of a justice of the peace, the proceedings upon such orders shall be the same, as near as may be, as in actions brought in the district court. The return day of such orders shall, when issued at the commencement of the action, be the same as that of the summons; when issued afterwards, they shall be made returnable forthwith.

Amended 1883, p. 222.

1092. **Stay of execution.**—Any person against whom a judgment is rendered, on all sums exceeding two hundred dollars, may have stay of execution in like manner as upon judgments rendered in the district court, and upon the same conditions; and upon all sums of two hundred dollars and under, the same as provided for in actions before justices of the peace.

Amended 1885, p. 244. Execution may issue against both principal and sureties. **21**, 323 (32 N. W., 73). Not void though imperfect. **9**, 278 (2 N. W., 858).

1093. Any person having a judgment rendered by a probate court may cause a **transcript** thereof to be filed in the office of the clerk of the district court in any county of this state, and when said transcript is so filed, and entered upon the judgment record, such judgment shall be a lien on real estate in the county where the same is filed, and when the same is so filed and entered upon such judgment book, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

1094. The probate judge shall issue **execution** on judgments rendered by said court, and the proceedings upon any such execution shall, in all cases, be as is provided by law governing executions issued upon the judgments of a justice of the peace.

1095. All **writs**, citations, and all process in civil actions, issuing out of any probate court, shall be under the seal thereof, and be **signed** by the probate judge.

Approval of bonds, etc., need not be attested by seal. **17**, 73 (22 N. W., 232); **22**, 88 (34 N. W., 76).

1096. All **process** in civil actions in such court shall be **directed** to the sheriff or any constable of the county, and the same shall be served by the officer to whom it is directed, and return thereof made at the time therein directed; and for any neglect or omission to do so, he and his sureties may be proceeded against in like manner as in similar cases before justices of the peace.

1097. All writs, notices, orders, citations, and other process, except in proceedings for contempt, may be served in like manner as a summons in a civil action in the district court, and the **service of** the same by a copy thereof, left at the usual place of residence of the party to be served, shall be deemed equivalent to personal service thereof in cases where personal service is required by law; but to bring a party into contempt there must have been actual personal service of the process upon the disobedience of which the contempt is founded, and there must be actual personal service of all process in the proceedings for contempt. In cases where writs, notices, citations, or other process cannot be served as aforesaid in this state, the probate court may, in cases where it may be necessary, order the service thereof to be made by publication in some newspaper in this state in such manner as the court may direct, and thereupon the same proceedings may be had as in [if] such writs or other process had been served as aforesaid in this state. Nothing contained in this section shall limit or take away the power of the probate court or judge thereof to give notice or cause the same to be given by publication in the various cases provided by law.

1098. All writs and other process, except subpœnas, may be executed and **served,** as the case may require, **in any county** in the state; and if it be a county other than that of the residence of the probate judge, the same shall be directed to the sheriff of such other county.

Under the law as it was formerly, summons could not issue to another county. **10,** 267 (4 N. W., 981). County judge, and probably justice may issue summons to other counties to bring in other obligors on a note. **27,** 580 (43 N. W., 347).

1099. It shall be the duty of the **sheriffs** of the several counties to execute or **serve** all writs and **process** issued by any probate court and to them directed, and to return the same; for any neglect or refusal so to do, they [may] be proceeded against in the probate court the same as for a neglect or refusal to execute or serve process issued out of the district court.

24, 490 (39 N. W., 419).

1100. In civil actions brought under the provisions of this chapter, either party may **appeal** from the judgment of the probate court, or prosecute a petition in error, in the same manner as provided by law in cases tried and determined by justices of the peace. The amount of the bond or undertaking taken shall be double the amount of the judgment and costs, and shall be approved by the probate judge.

There must be a judgment to appeal from. **23,** 164 (36 N. W., 463). If judge do not approve bond left with him he should at once notify the party. **16,** 41 (20 N. W., 21). Appeal by principal against whom, with sureties, judgment has been rendered, gives district court jurisdiction to render judgment against all. **24,** 370 (38 N. W., 844). Appeal bond may be amended or a new one filed. Notice of appeal need not be given. **16,** 293 (20 N. W., 314). See **11,** 363 (9 N. W., 547).

EVIDENCE.

1101. **Depositions** may be taken to be used in evidence in any cause, matter, or proceeding pending in any probate court, in the like manner and upon the like notice as in actions in the district court. Depositions so taken must be addressed and transmitted to the judge of the court in which the cause, matter, or proceeding is pending.

MISCELLANEOUS PROVISIONS.

1102. When for any cause the probate **judge fails to attend** at the commencement of any regular term, or at the time when any cause is assigned for trial, or at the time to which any cause may be continued, the parties shall not be obliged to wait more than one hour, and if he does not attend within the hour, the parties in attendance shall be required to attend at nine o'clock A. M. of the following day, and if such judge shall not attend at that time, the cause shall stand continued until the first day of the next regular term. This section shall apply only to causes not cognizable before justices of the peace.

1103. In all actions brought in the probate court in pursuance of the provisions of this chapter, **parties**, jurors, and witnesses shall be obliged to **appear** at the time when the summons is returnable, or at which the cause is assigned for trial, or to which it may be continued.

1104. The provisions of this code relative to **adjournment** of causes before justices of the peace shall apply to civil actions in the probate court not cognizable before such justices, so far only as the causes for adjournment and the conditions to be imposed thereon are concerned, but the time for which the cause may be adjourned shall be regulated by the probate judge in the exercise of a reasonable discretion; *Provided*, That such action cannot be adjourned over more than three regular terms of said court, upon the application of either party, without the consent of the other.

1105. The probate judge shall keep a **docket** in which all of his proceedings in civil actions shall be entered in like manner, as near as may be, as the proceedings before justices of the peace in civil actions; and the provisions of this code relating to justices' docket shall, as near as may be, apply to the docket of the probate judge.

1106. The **probate books** shall consist of a record, entry, estate, and fee book, which shall be kept as follows: I. The record book shall contain a full record of all wills, testaments, and codicils, and the probate thereof, all letters testamentary, of administration and guardianship, and all bonds of executors, guardians, and administrators. The original papers shall be filed and preserved in the office. II. There shall be entered in the estate book all inventories, appraisements, sale bills, and other exhibits and reports received by the court, relative to the settlement or disposition of estates, showing the amount of all such estates, as shown by such instruments. III. The entry book shall contain a fair statement of all the matters, controversies, and suits that may have arisen for decision and adjudication before said court, with the names of the parties, dates of each entry, and the judgment or opinion of the court, and all orders thereof, and a full record of all determinations of the district or supreme court upon appeal or petition in error in such matters, controversies, and suits. IV. The fee book shall contain an exact account of all fees allowed and paid in each case, showing the names of the persons receiving the same, and for what such fees were paid.

1107. An **index** shall be attached to each book required to be kept by the probate judge, in which shall be inserted in alphabetical order the names of the parties or persons in whose names the entries in such books are made.

1108. Every **record** made in any probate court, excepting original orders, judgments, and decrees thereof, shall have attached thereto a certificate signed by the judge of such court, showing the date of such record and the county in which the same is made, and it shall not be necessary to call such judge or his successor in office to prove such record so certified. And in any cause, matter, or proceeding in which the probate court or probate judge has jurisdiction, and is required to make a record not provided for in this chapter, such record shall be **certified** in the same way and with like effect as aforesaid.

1109. When any probate **judge** shall be **disqualified** from acting in any cause or matter before him, or is temporarily absent from the county, the county commissioners may appoint a competent and disinterested person to act in place of such judge, in such case or other matter, during such absence or disqualification, who shall give bonds in the same manner and possess the same powers, and be subject to the duties, restrictions, and liabilities therein as are prescribed by law respecting probate judges.

Does not apply to mere ministerial acts. **17,** 523 (23 N. W., 524). Will continue to act until such matter is fully disposed of. **23,** 226 (36 N. W., 492). In the absence of record to the contrary, it will be presumed that the acting judge has been duly appointed. **3,** 343.

1110. All **bonds** required by law to be taken in or by order of the probate court shall be for such sum, with such sureties as the judge shall prescribe, except as otherwise provided by law, and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the state of Nebraska, except where they are required to be taken to the adverse party.

Secs. 1111 to 1113. "An act prescribing the method of proving records of probate courts relative to the sale of lands and appointment of guardians, executors, and administrators in certain cases and perpetuating the evidence thereof." G. S., 1873, p. 271. In force February 26.

1111. That in all cases where **lands** have been **sold** by order of the probate court in any county in the territory or state of Nebraska, on application of the guardian of any minor child or children, or executor or administrator, and it shall appear in any action in any court held within this state, relating to the title to such land, that the **record,** or any part of the record, of such sale is imperfect or deficient or that such record, or any part thereof, or any paper or papers, notice, affidavit, document, instrument, or any proceeding whatsoever, from the filing of the petition, for license to sell until the execution of the deed to the purchaser, has been lost or destroyed by fire or otherwise, or cannot be found, the contents of such record, paper, notice, affidavit, document, instruments, or other proceeding may be **proved** in the same manner as in case of other lost instruments or papers, by secondary evidence, and when so proved they shall have the same effect as if proven by the production of the original record, paper, notice, affidavit, document, instrument, or other proceedings, or by a duly certified copy thereof.

Covers all cases where county court records are lost or destroyed. **18,** 152 (24 N. W., 716).

1112. When in such action it shall appear that the **record,** or any bond, paper, instrument, or other proceeding connected with the appointments of the guardian, executor, or administrator, by whom such sale was made, has been **lost** or destroyed by fire or otherwise, or cannot be found, the contents thereof may be proven in the manner and with the effect prescribed in section one of this act, as to the matters therein provided for.

1113. The **testimony** of any witness, as to any matter or thing mentioned in this act, may be **perpetuated,** and shall be received and admitted in any action aforesaid, and with the effect prescribed in this act, in the same manner as prescribed by law in other cases.

APPEALS.

Secs. 1114 to 1120. "An act providing for an appeal from the decision of the county court in certain matters." 1881, p. 227. In force June 1.

1114. In all matters of probate jurisdiction, **appeals** shall be allowed from any final order, judgment, or decree of the county court to the district court by any person against whom any such order, judgment, or decree may be made, or who may be affected thereby.

This act repeals by implication secs. 233 to 238 of the decedent act governing appeals. Bond can be filed within thirty days, and no notice is necessary. **25,** 267 (41 N. W., 157). Act complete in itself. **27,** 859 (44 N. W., 40). The judgment on the probate of a will may be appealed from. The consent of the court is not necessary; it is a matter of right. **16,** 295 (20 N. W., 314). Appeal lies from order of county judge allowing or disallowing a claim against an estate. Bond with but one surety is not void but may be amended. **13,** 8 (12 N. W., 840).

1115. All appeals shall be taken within thirty days after the decision complained of is made.

Filing a bond twenty-seven days after adverse judgment, and of transcript, with clerk of district court, ten days thereafter, sufficient. **27,** 861 (44 N. W., 40). Appeal not defeated by neglect of judge to prepare transcript so that it could be filed within the thirty days. **29,** 423 (45 N. W., 640).

1116. Every party so appealing shall give bond in such sum as the court shall direct, with two or more good and sufficient sureties, to be approved by the court, conditioned that the appellant will prosecute such appeal to effect without unnecessary delay, and pay all debts, damages, and costs that may be adjudged against him. The bond shall be filed within thirty days from the rendition of such decision. But an executor, administrator, guardian, or guardian *ad litem* shall not be required to enter into bond in order to enable him to an appeal. If it shall appear to the court that such appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee to the adverse party, the court to fix the amount thereof, and said bond shall be liable therefor in cases where it is required.

Appeal being taken, all matters pertaining to account are transferred to district court. **21,** 237 (31 N. W., 739). When bond is approved, the presumption is that it conforms to the rules of the court. **21,** 236 (31 N. W., 739).

1117. After such bond has been filed, the appeal shall be granted, but shall not be a supersedeas in any other matter relating to the administration of the estate, except that from which the appeal is specially taken.

1118. When such appeal is taken, the county court shall, on payment of his fees therefor, transmit to the clerk of the district court, within ten days after perfecting such appeal, a certified transcript of the record and proceedings relative to the matter appealed from.

29, 608 (46 N. W., 85).

1119. Upon the filing of such transcript in the district court, that court shall be possessed of the action, and shall proceed to hear, try, and determine the same, in like manner as upon appeals brought upon the judgment of the same court in civil actions.

1120. The final decision and judgment in matters so appealed shall be certified to the county court, and proceedings shall be had thereon necessary to carry the final decision and judgment into execution.

Secs. 1121 to 1123. "An act to provide clerks or assistants for the county judge in counties having over 25,000 inhabitants and providing for payment of same." 1887, p. 465. In force March 31.

1121. That in all counties in the state of Nebraska having over twenty-five thousand (25,000) inhabitants the judge of the county court shall be supplied with the help necessary for the use of said office, said clerks or help to be paid in manner hereafter provided.

1122. The salaries of said clerks or assistants shall be fixed, allowed, and paid monthly, by the county commissioners or supervisors, out of the general fund of said county.

1123. That all acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

CHAPTER 12.—DECEDENTS' ESTATES.

Sec. 1124. "An act, etc., repealing sections 1 to 29, ch. 23, R. S., 1866, and amending sec. 30 of the same." 1889, p. 473. In force March 29.

1124. When any person shall die seized of any **lands,** tenements, or herediments, or of any rights thereto, or entitled to any interest therein **in fee simple,** or for the of life another, not having lawfully devised the same, they shall **descend,** subject to his debts, in the manner following: *First*—If the intestate leave no issue, one-half shall descend to his widow in absolute title, and one-half to his father and mother. *Second*—If the intestate shall leave only one issue, one-half shall descend to his widow in absolute title, and one-half to his issue. *Third*—If the intestate leave two or more issue, one-third shall descend to his widow in absolute title, and the residue in equal shares to his children and to the lawful issue of any deceased child by right of representation. *Fourth*—If the intestate leave no issue and no father, one-half shall descend to his widow in absolute title, and one-half to his mother. *Fifth*—If the intestate leave no issue, and no mother, one-half shall descend to his widow in absolute title, and one-half to his father, and in case of the death of both father and mother, their distributive share shall descend to the deceased's brothers and sisters, in equal shares, and to their lawful issue by right of representation. *Sixth*—If the intestate leave no widow, his estate shall descend to his children in equal shares, and to the lawful issue of any deceased child by right of representation. *Seventh*—If the intestate leave no issue, and no widow, all his estate shall descend to his parents, and in case of the death of either, then to the surviving parent, and in case of the death of both, in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister by right of representation. *Eighth*—If the intestate leave no issue, nor widow, and no father, mother, brother, or sister, his estate shall descend to his next of kin in equal degree; excepting when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred; *Provided, however, Ninth*—If any person shall die, leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased, by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent and to the issue of any such other children who shall have died, by right of representation. *Tenth*—If at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the said estate equally; otherwise they shall take according to the right of representation. *Eleventh*—If the intestate shall leave a widow and no kindred, his estate shall descend to such widow. *Twelfth*—If the intestate shall leave no widow nor kindred, his estate shall escheat to the state of Nebraska; *Provided further*, That the **homestead,** if any, left by the intestate shall **descend** as follows: The homestead shall be appraised by the county treasurer and county clerk and one freeholder to be appointed by the judge of the county court, all to be residents of the county in which the homestead is situate. The judge of the county court shall, within sixty days after he has been notified in writing, by any person, of the death of the deceased, and that the intestate leaves a homestead, or if the judge of the county court shall ascertain said facts from any other source, shall appoint such appraiser, and notify the county treasurer and county clerk and the appraiser appointed by said judge of the county court, in writing, to meet on a day fixed by said judge, within thirty days from the notice to meet at his office. The said appraisers shall then proceed at once to appraise the homestead of the deceased at its cash value, which appraisement shall be made and returned in writing, under oath, by said appraisers, and shall be made a part of the records of said court. In case that any of the said appraisers shall fail to meet, the said court shall appoint other freeholders in their place, who shall proceed and appraise said homestead under this provision, and any vacancy at any time shall be filled in the same way. The judge of the county court shall thereupon deduct from said appraisement the amount of incumbrance, if any, upon said homestead, and if the residue does not exceed the sum of one thousand (1,000) dollars, said homestead shall descend to the **widow** in absolute title, subject to the incumbrance on the same, if any; in case there is a residue after deducting the amount of the incumbrance, if any, and the one thousand dollars, it shall descend as provided in this act. And it is further provided that the widow shall have the option to retain the homestead, subject to the incumbrance, if any, by paying such share or shares as descend to other heirs within six months from her election to retain the homestead, which shall be within sixty days after the return of the appraisal; and in case she does not so elect, the property shall be sold by the said appraisers at public sale, for cash, subject to the incumbrance, if any, after giving notice by publication four consecutive weeks in some newspaper published in said county, which notice shall contain a description of the homestead and the place and terms of sale, which sale shall be conducted in the same manner as a sheriff's sale of real estate on execution. Said appraisers shall make a full return of all their doings in and about the sale, including the notice to sell, under oath, to the county judge, who shall certify all of said papers to the district court of said county on or before the first day of the next term thereof, and said district court shall confirm or disaffirm said sale, as in cases of sale of real estate by order of said court. And in case the sale is disaffirmed, said court shall order another sale. In case said sale is affirmed, the said district court shall order said appraisers to execute a deed of conveyance to the purchaser and deliver the same to the clerk of said court, who shall deliver the same, together with a certified copy of the proceedings in said district court, to the judge of the county court, and take his receipt for the same. The said county court shall at once notify the purchaser that he holds said deed for delivery to said purchaser, upon the payment of the purchase money for said real estate to said county judge by said purchaser; and in case said purchaser shall fail or neglect to pay said purchase money, as above provided, within thirty days from and after he has been notified that said county court holds said deed, said purchaser shall pay all the costs of said sale and confirmation, including the expense of an attorney's fee expended in the sale and confirmation of said sale, which can be collected by any one to whom said fees are to be paid, or by any one who has paid the same or any part thereof. When said purchase money has been paid to the said judge of the county court, as above provided, he shall at once proceed to distribute the same as follows: The first one thousand dollars shall be paid to the widow, the residue as other personal property. Said appraisers shall receive the same fees as jurors, and shall be paid out of said estate. The widow's share cannot be affected by any will of her husband unless she consents thereto in writing within thirty days after his will has been left with the county judge for probate, and she advised of its contents by a certified copy of the will duly served on her by personal service, and her consent, as aforesaid, filed with the county judge, who shall make it a part of the record. The same share of the real estate of the deceased wife, as provided in this act, shall be set apart to the surviving husband. All provisions made in this act in regard to the widow of a deceased husband shall be applicable to the surviving husband of the deceased wife. The widow of any deceased person shall be entitled to her distributive share of all the lands whereof her husband was seized of all estate of inheritance at any time during the marriage, unless she joins in a deed of conveyance with her husband, or is otherwise lawfully barred; *Provided, however,* If the wife is **insane** she may be barred of her dower and interest in her husband's real estate at any time during the life of the husband, by deed of her lawfully appointed guardian; *Provided,* That the **widower** of any deceased person shall be entitled to his distributive share, equal to that received by the widow, of all the lands whereof his wife was seized of all estate of inheritance at any time during the marriage, unlesss he joins in a deed of conveyance with his wife or is otherwise lawfully barred. The estate of dower and curtesy are hereby abolished.

Wife owning real estate during her lifetime leased the same for a term of years. After her death a creditor of husband obtained judgment and sold husband's interest in said estate. Held, that the creditor only took the interest the husband had in the premises, and could not obtain possession of the premises until the expiration of the lease. 8, 527. A mere dower interest is not sufficient to authorize the person entitled thereto to partition. **20,** 182 (29 N. W., 299). See **5,** 206; **13,** 285 (13 N. W., 401); **26,** 68 (41 N. W., 1065); **28,** 380 (44 N. W., 456).

Secs. 1125 to 1135 formed secs. 31 to 41, ch. 14, R. S. 1866, p. 62.

1125. Every **illegitimate child** shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as an heir of his mother, and shall inherit his or her estate in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried and had other children, and his father, after such marriage, shall have acknowledged him, as aforesaid, or adopted him into his family, in which case such child and all legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the other shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estate of all the said children as provided hereinbefore, in like manner as if all had been legitimate.

1126. If any **illegitimate child** shall die intestate, without lawful issue, his **estate** shall descend to his mother, or, in case of her decease, to her heirs at law.

1127. The degrees of **kindred** shall be **computed** according to the rule of the civil law; and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

1128. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an **advancement** to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

1129. If the amount of such **advancement** shall exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

1130. If such **advancement** be made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and, if it be in personal estate, it shall be considered a part of the personal estate; and if in either case it shall exceed the share of real and personal estate, respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

1131. All **gifts** and grants shall be **deemed** to have been made in **advancement**, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

1132. If the **value** of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise it shall be **estimated** according to its value when given, as nearly as the same can be ascertained.

1133. **If** any **child** or lineal descendant so advanced shall **die** before the intestate, bearing issue, the **advancement** shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be **allowed** accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

1134. Nothing in this chapter shall affect the title of a husband as tenant by the **curtesy**, nor that of a widow as tenant in **dower**; nor shall the same affect any limitation of any estate by deed or will.

1135. Inheritance or succession by **right of representation** takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. **Posthumous children** are considered as living at the death of their parents.

SALE OF LANDS FOR THE PAYMENT OF DEBTS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

Secs. 1136 to 1172 formed secs. 67 to 104, ch. 14, R. S. 1866. (Sec. 7 omitted in numbering.)

1136. When the personal estate of any deceased person, in the hands of his executors or administrators, shall be insufficient to pay all his debts, with the charges of administering his estate, such **executors** or administrators **may sell** his **real estate** for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

1137. In order to obtain such license, the **executor** or administrator shall present a **petition** to the district court of the county in which he was appointed, setting forth the amount of personal real estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts outstanding against the deceased, so far as the same can be ascertained; a description of all real estate of which the testator or intestate died seized; and the condition and value of the respective portions or lots; which petition shall be verified by the oath of the party presenting the same.

Amended 1867, p. 114; 1887, p. 384.

1138. If it shall appear by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole or some portion of the real estate for the payment of such debts, the judge of the district court shall thereupon make an **order**, directing all persons interested in the estate to appear before him at a time and place therein to be specified, not less than six weeks and not more than ten weeks from the time of making such order, **to show cause** why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

1139. A **copy** of such order to show cause shall be **personally served** on all persons interested in the estate, at least fourteen days before the time appointed for hearing the petition, or shall be published four successive weeks in such newspaper as the court shall order; *Provided, however,* If all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

1140. The judge of the district court, at the time and place appointed in such order, or at such other time as the **hearing** shall be adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all persons interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate, who shall think proper to oppose the application.

1141. The executor or administrator may be examined on oath, and **witnesses** may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the district judge in the same manner and with the like effect as in other cases.

1142. If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a **sale** of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, said court may authorize the sale of the whole estate, or such part thereof as may be judged necesary, and most for the interest of all concerned.

1143. When the **executor** or administrator is authorized to sell more than is necessary for the payment of debts, he shall, before the sale, give **bond** to the judge of the district court, with sufficient sureties, to account for all the proceeds of the sale that shall remain after the payment of the debts and charges, and to dispose of the same according to the law; and in all cases where license is granted for the sale of real estate the judge of the district court may require a further bond from the executor or administrator, when he shall deem it necessary.

In all cases bond must be given. 18, 297 (25 N.W., 86).

1144. The **proceeds** of any real estate sold for the payment of debts, and charges of administration, as provided in this subdivision, shall be deemed assets in the hands of the executor or administrator, in like manner as if the same had been originally part of the goods and chattels of the deceased, and the **executor** and administrator, and the sureties in his administration bond, shall be **accountable** and chargeable therefor.

1145. No license to sell real estate shall be granted, if any of the **persons interested in** the **estate** shall give **bond** to the judge of the district court, in such sum and with such sureties as he shall direct and approve, with condition **to pay** all the **debts** and the expenses of administration so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor, within such time as the judge of the court shall direct.

1146. The **bond** mentioned in the preceding section shall be for the security, and may be **prosecuted** for the benefit of the creditors, as well as the executor or administrator.

1147. If the judge of the district court shall be satisfied after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale be assented to by all persons interested, he shall thereupon make an **order of sale,** authorizing the executor or administrator to sell the whole, or so much and such part of the real estate described in the petition as he shall judge necessary or beneficial.

1148. The **order** shall **specify** the lands to be sold, and the judge of the district court may therein direct the order in which several tracts, lots, or parcels shall be sold; and if it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the district judge shall order that part descended to heirs to be sold before that so devised; and if it appear that any lands devised or descended have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

1149. Upon the making of such order, and the filing with the judge of the district court of such bond as is required by the provisions of this subdivision, a certified copy of the **order** of sale shall be delivered by the judge **to** the **executor** or administrator, who shall thereupon be authorized to sell the real estate as therein directed, within one year after the making of the order, but not after that period.

1150. **License** to sell real estate, as provided in this subdivision, may extend to the reversion of the **dower** of the widow of a deceased person; and if such reversion be not sold with the other real estate, it may be sold after the expiration of the widow's term.

1151. When a **sale** is ordered, **notice** of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

1152. Such **sale** shall be in the county where the lands are situated, at public vendue, between the hours of nine in the morning and the setting of the sun the same day, and said sale shall be held open for one hour within said specified time, which hour shall be stated in the notice of sale provided for in the preceding section.

1153. The **executor** or administrator making the sale and the guardian of any minor heir of the deceased shall **not** directly or indirectly purchase, or be **interested in** the **purchase** of any part of the real estate so sold; and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

1154. On such sale, the executor or administrator may give such length of **credit,** not exceeding three years, and for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed or shall be approved by the judge of the district court, and shall secure the moneys for which credit is given, by a bond of the purchaser and by a mortgage of the premises sold.

1155. The executor or administrator making any sale shall immediately make a return of his proceedings upon the order of sale in pursuance of which it is made, to the judge of the district court granting the same, who shall examine the proceedings, and may also examine such executor, or administrator, or any other person on oath, touching the same; and if he shall be of opinion that the **proceedings** were **unfair** or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a **new sale,** may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given; and the sale shall be in all respects as if no previous sale had taken place.

1156. If it shall appear to the district judge that the **sale** was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum than above specified cannot be obtained, he shall make an **order confirming** such sale, and directing conveyances to be executed.

Court should confirm sale. **19,** 492 (26 N. W., 385).

1157. Every **executor** or administrator authorized to sell real estate, as provided in this subdivision, shall, before making such sale, take and subscribe an **oath** before the judge of the district court, or some other officer authorized to administer oaths, that in disposing of the real estate which he is licensed to sell he will exert his best endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested, which oath shall be filed with the judge of the district court before the confirmation of the sale.

1158. An affidavit of the executor or administrator, or of some other person having knowledge of the fact, that **notice of** any such **sale** was given as provided in this subdivision, being made before the judge of the district court or some other officer authorized to administer oaths, and filed and recorded in the district court, together with a copy of the notice, shall be admitted as **evidence** of the time, place, and manner of giving the notice.

1159. If, at the time appointed for any such sale, the executor or administrator shall deem it for the interest of all persons concerned therein that the **sale** shall be **postponed,** he may adjourn the same from time to time, not exceeding, in all, three months.

1160. In case of such **adjournment, notice** thereof shall be given by a public declaration at the time and place first appointed for the sale, and if the adjournment shall be more than one day, further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

1161. When a testator shall have given any legacy by will, that is effectual to pass or charge real estate, and his **goods** and chattels, rights and credits shall be **insufficient to pay** such **legacy,** together with his debts and the charges of administration, the executor or administrator, with the will annexed, may be licensed to sell his **real estate** for that purpose, in the same manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a **sale** for the payment of debts.

1162. If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his **interest in** such **land** and **under** such **contract** may be **sold,** on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this subdivision in respect to lands of which he died seized, except as hereinafter provided.

This does not apply to leases of state school lands. **26,** 316 (41 N. W., 1117).

1163. Such **sale** shall be made **subject to** all **payments** that may thereafter become **due** on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the judge of the district court until the **purchaser** shall execute a **bond** to the executor or administrator for the benefit and indemnity of the person entitled to the interest of the deceased in the land so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of the district court shall approve.

1164. Such **bond** shall be **conditioned** that such purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

1165. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an **assignment of** such **contract,** which assignment shall vest in the purchaser, his heirs and assigns, all the right, interest, and title of the person entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living.

1166. The **proceeds of** every such **sale** of the interest of the deceased person in lands under contract, as hereinbefore mentioned, shall be disposed of, in all respects, in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this subdivisian.

1167. All **sales** and conveyances of land **made** by executors or administrators, pursuant to the provisions of this subdivision, shall be **subject to** all charges thereon, by **mortgage** or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased shall be in any way liable for the amount secured by any such mortgage, or for any such charge, such sale shall not be confirmed by the judge until the **purchaser** shall execute a **bond** to the executor or administrator, as required in this subdivision in the case of the sale of a contract for the purchase of lands on which payments are to become due.

1168. When an executor or administrator shall be appointed in any state or territory, or in any foreign country, on the estate of any person dying out of this state, and no executor or administrator thereon shall be appointed in this state, the **foreign executor** or administrator may file an authenticated copy of his appointment, in the district court in any county in which there may be any real estate of the deceased.

See **16,** 420 (20 N.W., 266).

1169. Upon filing such authenticated copy of his appointment, such **foreign executor** or administrator may be **licensed** by the same court to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

1170. When it shall appear to the court granting the license that such **foreign executor** or administrator is **bound** by sufficient surety or sureties, **in** the state or **country in** which he was **appointed,** to account for the proceeds of such sale for the payment of debts, or legacies, and charges of administration, and a copy of such bond, duly authenticated, shall be filed in such court, no further bond for that purpose shall be required of him by the court.

1171. If an authenticated copy of such bond shall not be filed, as mentioned in the preceding section, such **foreign executor** or administrator, before making such sale, shall give **bond,** with sufficient sureties, to the judge of the district court, with condition to account for and dispose of the proceeds of such sale for the payment of the debts or legacies of the deceased, and the charges of administration, according to the law of the state or country in which he was appointed.

1172. When such foreign executor or administrator is **licensed to sell more than** is **necessary** for the payment of debts, legacies, and charges of administration, as before provided for in this subdivision, he shall, before making the sale, give **bond** with sufficient sureties to the judge of the district court, with condition to account to him for all proceeds of the sale that shall remain after payment of the said debts, legacies, and charges, and to dispose of the same according to law.

Secs. 1173 to 1378 formed secs. 114 to 335, ch. 14, R. S. 1866, p. 79 (16 sec. repealed).

1173. In all cases of sale by an executor, administrator, or guardian of part or the whole of the real estate of his testator, intestate, or ward, under a license granted by any district court, by virtue of the provisions of this subdivision, whether such executor, administrator, or guardian was appointed in this state or elsewhere, the surplus of the **proceeds** of the sale remaining on the final settlement of the accounts shall be considered as real estate and disposed of among the persons, and in the same proportion, as the real estate would have been by the laws of this state if it had not been sold.

1174. Every guardian, whether appointed in this state or elsewhere, when licensed to sell real estate, as provided in this subdivision, shall, before making such sale, take and subscribe an **oath** like that required in the same case of an executor or administrator; and notice shall be given and the proceedings shall be conducted in the like manner as is prescribed in the case of an executor or administrator, and the evidence of giving such notice may be perpetuated in the same manner.

1175. If any person shall appear and object to the **granting** of any **license** prayed for under the provisions of this subdivision by the executor, administrator, or guardian, and if it shall appear to the court that either the petition or **objection** thereto is unreasonable, the court may, in its discretion, award **costs** to the party prevailing, and may enforce the payment thereof.

1176. No **action** for the recovery of any estate sold by an executor or administrator, under the provisions of this subdivision, shall be maintained by any heir or other person claiming under the deceased testator or intestate, unless it be **commenced** within five years next after the sale, and no action for any estate sold in like manner by a guardian shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, except as hereinafter provided.

1177. The preceding section shall **not apply** to persons out of this state, nor to minors or others under any legal disability to sell at the time the right of action shall first accrue; but all such persons may commence such action at any time within five years after the removal of the disability or their return to this state.

1178. In the case of any action relating to any estate sold by an executor, administrator, or guardian, in which an heir or person claiming under him shall contest the validity of the **sale**, it shall **not** be **avoided** on account of any **irregularity** in the proceedings, provided it shall appear: *First*—That the executor, administrator, or guardian was licensed to make the sale by the district court having jurisdiction. *Second*—That he gave a bond, which was approved by the judge of the district court, in case a bond was required upon granting a license. *Third*—That he took the oath prescribed in this subdivision. *Fourth*—That he gave notice of the time and place of the sale, as in this subdivision prescribed; and, *Fifth*—That the premises were sold accordingly, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

Failure to appoint a guardian *ad litem* is not available as an objection. 18, 298 (25 N. W., 86).

1179. If there shall be any neglect or **misconduct** in the proceedings **of** the **executor,** administrator, or guardian, in relation to such sale, by which any person interested in the estate shall suffer **damages,** such aggrieved party may recover the same in a suit on the bond, or otherwise, as the case may require.

1180. If the validity of a sale made by an executor, administrator, or guardian shall be drawn in question by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person or the ward, the **sale** shall **not** be held **void** on account of any **irregularity** of the proceedings, provided it shall appear that the executor, administrator, or guardian was licensed to make the sale by a district court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

1181. Any **executor,** administrator, or guardian who shall fraudulently sell any real estate of his testator, intestate, or ward, contrary to the provisions of this subdivision, shall be **liable** in double the value of the land sold, as damages, to be recovered in a civil action by the person having an estate of inheritance therein.

WILLS.

1182. **Every person** of full age and sound mind, being seized in his own right of any lands, or any right thereto, or entitled to any interest therein descendable to his heirs, **may devise** and dispose of the same by his last **will** and testament in writing; and all such estates not disposed of by will shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament, in writing, and may alter or revoke the same in like manner that a person under no disability may do, and subject to the same restrictions.

Proviso requiring consent of husband omitted 1881, p. 233.

1183. Every **devise** of land, in any will hereafter made, shall be **construed** to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear, by the will, that the devisor intended to convey a less estate.

Intention of testator governs. Will construed, and held that under it husband took no estate by curtesy. **24,** 216 (38 N. W., 854). Words of inheritance are not necessary as at the common law. **25,** 321 (41 N. W., 186).

1184. Any **estate,** right, or interest **acquired** by the testator **after** the making of his will shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator.

1185. Every person of full age and sound mind may, by his last will and testament, in writing, bequeath and dispose of all his **personal estate** remaining at his decease, and all his rights thereto and interest therein, and all such estate not disposed of by the will shall be administered as intestate estate.

1186. No **will** made within this state, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way affect the same, unless it be in writing, and **signed** by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent **witnesses**; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

1187. No **nuncupative will** shall be good, when the estate thereby bequeathed shall not exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses, at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness of the deceased, and in the place of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

1188. After six months shall have passed after speaking any testamentary words, no **testimony** shall be received **to prove** the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken, nor shall letters testamentary or probate of any **nuncupative will** pass the seal of any probate court until fourteen days, at least, after the decease of the testator be fully expired; nor shall any nuncupative will be at any time approved and allowed unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the state, to the end that they may contest the same if they please. Nothing herein contained shall prevent any soldier, being in actual service, nor any marine, being on shipboard, from disposing of his wages, and other personal estate, by nuncupative will.

1189. All beneficial devises, legacies, and **gifts** whatsoever, made or given in any will, **to** a subscribing **witness** thereto, shall be wholly **void**, unless there be two other competent subscribing witnesses to the same; but a new charge on the lands of the devisor for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

1190. [**Exception.**]—But if such witness, to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established, then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

1191. No **will**, nor any part thereof, shall be **revoked**, unless by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing signed, attested, and subscribed in the manner provided in this chapter, for the execution of a will; excepting only that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

1192. Any **will** in writing, being enclosed in a sealed wrapper, and having endorsed thereon the name of the testator and his place of residence, and the day when and the person by whom it is delivered, may be **deposited** by the person making the same, or by any person for him, **with the probate judge** in the county where the testator lives, and the probate judge shall receive and safely keep such will, and give a certificate of the deposit thereof.

1193. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court, after the notice thereof, it shall be publicly **opened by** the **judge of** probate, and be retained by him.

1194. The judge of probate shall give **notice of** such **will** being in his possession to the executor therein appointed, if there be one; otherwise, to the persons interested in the provisions of the same, to be presented for probate in such court.

1195. **Every person** other than the judge of probate, having the custody ot any will, shall, within thirty days after he has a knowledge of the death of the testator, **deliver** the same into the probate court which has jurisdiction of the case, or to the person named in the **will** as executor.

1196. Every person named as **executor** in any will shall, within thirty days after the death of the testator, or within thirty days after he has a knowledge that he is named as executor, if he obtains such knowledge after the death of the testator, present such will to the probate court, which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall, within the period above mentioned, signify to the court his **acceptance of** the **trust**, or make known in writing to such court his refusal to accept it.

1197. Every person who shall **neglect to perform** any of the duties required in the last two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

1198. If any person having the custody of any **will** after the death of the testator, shall, without reasonable cause, **neglect to deliver** the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county by warrant issued by such court, and there be kept in close confinement until he shall deliver the will as above directed.

1199. When any **will** shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for **proving** it, when all concerned may appear and **contest** the probate of the will, and shall cause public **notice** thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this state as the judge shall direct, three weeks successively, previous to the time appointed, and no will shall be proved until notice shall be given as herein provided.

1200. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the **court** may, in its discretion, **grant probate** thereof on the testimony of one of the subscribing witnesses only, if such a witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

Form of order not material. **20,** 264 (29 N. W., 928). Cited, **13,** 151 (12 N. W., 841); **21,** 509 (32 N. W., 563).

1201. If none of the subscribing witnesses shall reside in the state at the time appointed for proving the will, the court may, in its discretion, admit the **testimony** of other witnesses to prove the sanity of the testator and the execution of the will, and, as evidence of the execution of the will, may admit proof of the handwriting of the testator, and of the subscribing witnesses.

1202. No **will shall be** effectual to pass either real or personal estate, unless it shall have been duly **proved** and allowed in the probate court, as provided in this chapter, or on appeal in the district court; and the probate of the will of real or personal estate as above mentioned shall be conclusive as to its due execution.

Will is not admissible in evidence unless probated. **13,** 150 (12 N.W., 841). County court has exclusive jurisdiction in probate of wills, and its order admitting a will to probate is conclusive unless set aside in a direct proceeding. **12**, 344 (11 N.W., 493). Failure to probate in Nebraska a will made in Iowa, but devising lands in this state will not preclude a legatee thereunder from disposing of his interest in such lands. **29**, 626, 644 (45 N.W., 931, 936).

1203. All **wills** which shall have been duly proved and allowed in any of the United States, or in any **foreign** country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator shall have real and personal estate on which such will may operate, in the manner mentioned in the following sections.

1204. When a **copy of such will,** and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in case of an original will presented for probate.

1205. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this state as the last will and testament of the deceased, the **copy** shall be **filed** and recorded, and the will shall have the same force and effect as if it had originally been proved and allowed in the same court; **Provided,* That all decrees heretofore made in this state allowing wills and admitting the same to probate, under the provisions of this and the two preceding sections, without the previous filing of the copy of the probate mentioned in section one hundred and forty-five (145) of this chapter [1204], shall be as legal and valid and shall have the same force and effect as if such copy had been duly filed prior to the making of such decree and the allowing of such will.

All after * added 1885, p. 246. **29**, 643 (45 N. W., 935).

1206. When any **will** shall be **allowed** as mentioned in the preceding section, the probate court shall grant letters testamentary or letters of administration with the will annexed, and such letters testamentary or letters of administration shall extend to all the estate of the testator in this state; and such estate, after payment of his just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as is provided by law in cases of estates in this state, belonging to persons who are inhabitants of any other territory, state, or country.

1207. When any **child** shall be **born after** the making of his parent's will, and no provision shall be made therein for him, such child shall have the same **share** in the estate of the testator as if he had died intestate, and the share of such child shall be assigned to him as provided by law in cases of intestate estate, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

1208. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such **omission** was not intentional, but was made **by mistake** or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

1209. When any **share of** the estate of the testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a **child, omitted** in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated, in which case such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment may be adopted, in the discretion of the probate court.

1210. When a devise or any legacy shall be made to any child or other relation of the testator, and the devisee or legatee shall die before the testator, having issue who shall survive the testator, such issue shall take the estate so given by the will in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

1211. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate, or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

1212. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

1213. If the provisions made by the will, or the estate appropriated, shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

1214. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

1215. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child or of the issue of a child not provided for in the will, as hereinbefore provided, the executor shall have a right to retain possession of the same until such liability shall be settled by order of the probate court, and until the devises and legacies so liable shall be accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court to have such liability settled, and his devise or legacy assigned to him.

1216. All the devisees and legatees who shall, with the consent of the executor, or otherwise, have possession of the estate given to them by will, before such liability shall be settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall be held to contribute, according to their respective liabilities, to the executor or to any devisee or legatee from whom the estate devised to him may have been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will as provided in this subdivision, shall be liable to contribute in like manner as the devisees or legatees.

1217. If any of the persons liable to contribute, according to the provisions of the preceding section, shall be **insolvent,** and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency in proportion to and to the extent of the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

1218. The probate **court** may, by decree for that purpose, **settle** the amount of the several **liabilities** as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute, and may issue execution as circumstances may require, and the claimant may also have a remedy in any proper action or complaint in law or equity.

1219. Every **will,** when **proved** as provided in this subdivision, shall have a **certificate** of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof, or a transcript of such record, certified by the judge of probate and attested by his seal, may be read in **evidence** in all courts within this state without further proof.

Certificate not essential to the validity of the probate of a will, merely entitles it to be read in evidence. **21,** 503 (32 N. W., 563.) Will not admissible in evidence unless probated. **13,** 160 (12 N. W., 841).

1220. An attested copy of every **will** devising lands or any interest in lands, and of the probate thereof, shall be **recorded** in the registry of deeds of the county in which the lands thereby devised are situated; **Provided,* That all conveyances of lands or any interest in lands within this state, which have been heretofore made by any executor prior to the filing of such attested copy, shall be as legal and valid and shall have the same force and effect as if such attested copy had been duly filed prior to the making of such conveyance.

All after * added 1885, p. 247.

1221. The word "**executor**" in this chapter shall be construed to include an administrator with the will annexed.

LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

1222. When a will shall have been duly proved and allowed the probate court shall issue **letters testamentary** thereon to the person named executor therein, if he is legally competent, and he shall accept the trust and give bond as required by law.

1223. Every **executor,** before he shall enter upon the execution of his trust and before letters testamentary shall issue, shall give **bond** to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: To make and return to the probate court, within three months, a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and to the will of the testator all his goods, chattels, rights, credits, and estate which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by the probate court; to render a true and just account of his administration to the probate court within one year, and at any other time when required by such court; and to perform all orders and decrees of the probate court by the executor to be performed in the premises.

1224. If, however, the **executor** shall be a **residuary legatee,** instead of the bond described in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with a condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

1225. No person named as **executor** in any will who shall **refuse** to accept the trust, or shall neglect to give bond as prescribed in this subdivision, for twenty days after the probate of such will, shall intermeddle or act as executor.

1226. If a person named **executor** in any will shall **refuse** to accept the trust, or shall, for the space of twenty days after the probate of the same, neglect to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there be any who are capable and willing to accept the trust, and if there be no such other executor who will give bond, the court may commit administration of estate, with the will annexed, to such person as would have been entitled to the same if the testator had died intestate.

1227. When the person named executor in any will is under age at the time of proving the will, administration shall be granted, with the will annexed, during the **minority of the executor,** unless there shall be another executor who shall accept the trust and give bond, and in that case the executor who shall give bond shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor on giving bond according to law.

1228. Every person who shall be appointed **administrator with the will annexed,** shall, before entering upon the execution of his trust, give **bond** to the judge of probate in the same manner and with the same condition as is required of an executor, and shall proceed in all things to execute the trust in the same manner as an excutor would be required to do.

1229. When an unmarried woman, appointed an **executrix** alone or jointly, with another person, shall marry, her **marriage** shall **extinguish** her **authority** as executrix, and her husband shall not be executor in her right.

1230. If an **executor** shall reside out of this state, or shall neglect, after due notice given by the judge of probate, to render his account and settle the estate according to law, or to perform any decree of the court, or shall abscond, or become insane, or otherwise incapable or unsuitable to discharge the trust, the probate **court** may **remove** such executor.

1231. When an **executor** shall **die** or be removed, or his authority shall be extinguished, the remaining executor, if there be any, may execute the trust; and if there shall be no other executor, administration with the will annexed may be granted of the estate not already administered.

1232. When an **executor** appointed in any will shall **not be authorized,** according to the provisions of this subdivision, to act as such, such as are authorized shall have the same authority to perform every act and discharge every trust required and allowed by the will, and their acts shall be as valid and effectual for every purpose as if all were authorized and should act together; and administrators with the will annexed shall have the same authority to perform every act and discharge every trust as the executor named in the will would have had, and their acts shall be as valid and effectual for any purpose.

1233. The **executor** of an executor shall not, as such, have any authority to administer the estate of the first testator, but on the **death of** the only surviving executor of any will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

1234. When two or more persons shall be appointed executors of any will, the judge of probate may take a separate **bond** from each of them, with sureties, or a joint bond from all of them, with sureties.

ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

1235. When any person shall die possessed of any **personal estate,** or of any right of interest therein not lawfully disposed of by his last will, the same shall be applied and **distributed** as follows: *First*—The widow, if any, shall be allowed all the articles of apparel and ornament, and all the wearing apparel and ornaments, of the deceased, the household furniture of the deceased, and other personal property, to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provisions made for her in the will of her husband as when he dies intestate. *Second*—The widow and children constituting the family of the deceased shall have such reasonable allowance out of the personal estate, or out of the income of the real estate, as the county court may judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances, which, in the case of an insolvent estate, shall not be longer than one year after granting administration, nor for any time after the personal estate shall be assigned to the widow. And when the personal estate and the income from the real estate shall be insufficient to meet the allowance made, or any other allowance made as provided by law, such an allowance shall be deemed a debt against the estate, to be paid out of the proceeds of the sale of any real estate, and to take its preference for payment next after debts due this estate, and before the claims of general creditors. *Third*—When a person shall die leaving children under fourteen years of age, having no mother, or when the mother shall die before the children shall arrive at the age of fourteen years, an allowance shall be made for the necessary maintenance of such children until they arrive at the age of fourteen years, out of such part of the personal estate and the income of such part of the real estate as would have been assigned to their mother if she had been living. *Fourth*—If, on the return of the inventory of any estate, it shall appear that the value of the salable estate does not exceed the sum of two hundred and fifty dollars, the county court may, by decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under fourteen years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges, and the expenses of administration. *Fifth*—If the personal estate shall amount to more than two hundred and fifty dollars, and more than the allowance mentioned in the preceding subdivision of this section, the same shall be applied to the payment of debts of the deceased, with the charges of his funeral and the settling of his estate. *Sixth*—The residue, if any, of the personal estate shall be distributed in the same proportion, to the same persons, as prescribed for the descent and distribution of real estate in this act, except that if the intestates leave no homestead, then one thousand dollars of the residue referred to in this division shall be set apart to the widow; and it is further enacted that the widow's share cannot be affected by any will of her husband, unless she consents thereto in writing within six months after notice to her of the provisions of the will by parties interested in the estate, which consent shall be entered on the records of the county court; all provisions made in this section in regard to the widow of a deceased husband shall be applicable and shall apply to the surviving husband of a deceased wife.

Materially changed 1889, p. 480. Liability of one who without authority converts decedent's personalty into money without administration. **27,** 338 (43 N. W., 107). Cited, **13,** 286 (13 N. W., 401).

1236. When any person shall die **intestate**, being an inhabitant of this state, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident at the time of his death. If such deceased person, at the time of death, resided in any other territory, state, or country, leaving estate to be administered in this state, administration thereof shall be granted by any probate court of any county in which there shall be estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this state, and shall exclude the **jurisdiction of** the probate **court** of every other county.

Widow of intestate, killed in Kansas, and whose sole assets consist of a claim against a railroad company for causing his death, may take out letters of administration in this state, and maintain action here. **24,** 858 (40 N. W., 401). Special administrator should be appointed by court having authority to grant letters testamentary or of administration. **13,** 386 (14 N. W., 159).

1237. **Administration of** the **estate** of a person dying intestate shall be **granted to** some one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order: *First*—The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust. *Second*—If the widow, or next of kin, or the person selected by them, shall be unsuitable or incompetent, or if the widow or next of kin shall neglect, for thirty days after the death of the intestate, to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it. *Third*—If there be no such creditor competent and willing to take administration, the same may be committed to such other person or persons as the judge of probate may think proper.

Appointment of administrators is in the discretion of the county judge. **21,** 665 (33 N. W., 206).

1238. Every administrator, before he enters upon the execution of his trust, and before letters of administration shall be granted to him, shall give a **bond** to the judge of probate, with such surety or sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as may be necessary to make it applicable to the case of an administrator.

1239. When there shall be a **delay** in the granting letters testamentary, or of administration, occasioned **by an appeal** from the allowance or disallowance of the will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as shall occasion the delay, shall be terminated, and an executor or administrator be thereupon appointed, and no appeal shall be allowed from the appointment of such **special administration.**

Change of administrator does not abate action by. **17,** 574 (24 N. W., 219). See **13,** 384 (14 N. W., 159). Special administrator may defend suit. **13,** 385 (14 N. W., 159.)

1240. **[Duties.]**—An administrator, appointed according to the provisions of the preceding section, shall collect the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who may afterwards be appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal estate as the probate court may order to be sold.

1241. **[Liability.]**—Such special administrator shall not be liable to an action by any creditor, to be called upon in any other way to pay the debts against the deceased.

1242. Every such special administrator shall, before entering upon the duties of his trust, give a **bond** to the judge of probate, as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits, and effects of the deceased which shall come to his possession or knowledge, and that he will truly account for all the goods, chattels, debts, and effects of the deceased which shall be received by him, whenever required by the probate court, and will deliver the same to the person who shall afterwards be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

1243. Upon granting letters testamentary, or of administration, on the estate of the deceased, the **power of** such **special** administrator shall **cease,** and he shall forthwith deliver to the executor or administrator all the goods, chattels, money, and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any suit commenced by such special administrator.

1244. If any person or persons, before the granting of letters testamentary or of administration, shall convert to his or their own use, or shall **embezzle,** alienate, **or destroy** any of the moneys, goods, chattels, or **effects of** any **deceased** person, such person or persons shall stand chargeable and be liable to the executor or administrator of the estate of such deceased person for the value of the moneys, goods, chattels, or effects so converted, embezzled, alienated, or destroyed, and for all damages sustained to be recovered by such executor or administrator, for the benefit of such estate, by a civil action in any court of competent jurisdiction, and no property whatever shall be exempt from levy and sale under process issued on the judgment obtained by such executor or administrator in such action.

Rewritten 1885, p. 245.

1245. **When** any such **executor** or administrator shall **die** without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased not already administered.

1246. If any administrator shall reside out of this state, or shall neglect, after due notice by the **judge** of probate, to render his account and to settle the estate according to law, or to perform any decree of such court, or shall abscond, or become insane, or otherwise unsuitable and incapable to discharge the trust, the probate court **may,** by an order therefor, **remove** such administrator.

Court may accept resignation of administrator about to remove. **18,** 148 (24 N. W., 716).

1247. When an unmarried woman who is **administratrix** alone, or jointly with another person, shall marry, her marriage shall extinguish her authority as administratrix.

1248. When an administrator shall be removed, or his authority shall be extinguished, the **remaining administrator** may execute the trust; if there shall be no other, the court of probate may commit administration of the estate not already administered to some suitable person, as in case of the death of a sole administrator.

1249. An **administrator appointed** in the place of any former executor, or administrator, for the purpose of administering the estate not already administered, shall have the same **powers,** and shall proceed in settling the estate in the same manner as the former executor or administrator should have had or done, and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

The office of administrator is a continuous office, though the person in the office may change. **18,** 149 (24 N. W., 716).

1250. If, after the granting of letters of **administration** by any probate court on the estate of any deceased person, as if he had died intestate, a will of such deceased person shall be duly proved and allowed by such court, the first administration shall, by decree of said court, be **revoked,** and the powers of the administrator shall cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

1251. The **executor** of the will shall, **in such case,** be entitled to **demand,** sue for, and collect all the goods, chattels, rights, and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

1252. **All acts** of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as **valid** to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

1253. When **two** or more **persons** shall be appointed administrators on any estate, the judge of probate may take a separate **bond** from each, with sureties, or a joint bond, with sureties from all.

1254. When application shall be made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause the **notice** of the same, and of the time and place of the hearing thereof, to be given by personal service on all persons interested, or by publication, under an order of such court, in such newspaper printed in this state as he may direct; *and when, upon such hearing, the grant of such administration shall be refused for any cause, the court of probate may, if all the parties interested were duly notified of such hearing, proceed to take the allegations and proofs to determine the party entitled to such administration, and to grant administration without further notice.

Amended and all after * added 1873, G. S., p. 313.

INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

1255. Every executor or administrator shall, within three months after his appointment, make and return, under oath, into the probate court from which he received his letters, a true **inventory** of the real estate, and of all the goods, chattels, rights, and credits of the deceased which shall have come into his possession or knowledge; excepting, only, that an executor or administrator with the will annexed, who shall be a residuary legatee, and shall have given bond to pay all the debts and legacies as provided by law, shall not be required to return an inventory; **Provided, however*, That the inventory of a special administrator shall be made out and returned, as aforesaid, within two weeks after his appointment.

Amended and all after * added 1873, G. S., p. 314.

1256. The personal **estate** and effects comprised in the inventory shall be **appraised** by two or more disinterested persons of the county, who shall be appointed by the probate court. The judge of probate may at any time appoint new appraisers to take the place of such as have already been appointed; and when a vacancy occurs by the neglect or refusal of an appraiser to serve, or by absence, death, or removal from the state, a new appraiser may in like manner be appointed.

Amended 1873, G. S., p. 314.

1257. When **appraisers** shall be appointed by a justice of the peace, he shall issue an **order** to them in substance as follows: State of Nebraska, ——— county, ss. To ———, of ———, in said county: You are hereby appointed to appraise, on oath, the estate and effects of ———, late of ———, deceased, which may be in said county, and when you have performed that service you are required to deliver this order, and your doings in pursuance thereof, to ———, executor or administrator, as the case may be, of said deceased. Given under my hand this —— day of ——, in the year A. D. 18—. ———, Justice of the Peace.

1258. The **appraisers** shall set down opposite to each item in such inventory, distinctly, in figures, the **value** thereof in money, and deliver the same, certified by them, together with their appointment, if made by a justice of the peace, to the executor or administrator.

1259. A **separate** and distinct **inventory** and appraisement shall be made and returned, as aforesaid, of all the household furniture and other personal property which may be allowed to the widow, pursuant to the provisions of this chapter, but the same shall not be considered assets in the hands of the executors or administrators.

1260. The **personal estate** of the deceased which shall come into the hands of the executor or administrator shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits in the hands of the executor or administrator shall not be sufficient to pay the debts of the deceased, and the expenses of administration, the whole of his real estate, except the widow's dower, or so much thereof as may be necessary, may be **sold** for that purpose by the executor or administrator, after obtaining license therefor in the manner provided by law.

1261. The **executor** or administrator shall have a **right to** the **possession** of all the real as well as personal estate of the deceased, and may receive the rents, issues, and profits of the real estate, until the estate shall have been settled, or until delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair all houses, buildings, and fences thereon which are under his control.

Administrator may maintain ejectment. **27**, 641 (43 N. W., 399). See **27**, 344 (43 N. W., 107).

1262. If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person shall complain to the judge of probate, on oath, that any person is suspected to have **concealed,** embezzled, carried away, or disposed of any money, **goods,** or chattels of the deceased, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath upon the matter of such complaint.

1263. If the **person** so **cited** shall **refuse to appear** and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the **court** may, by warrant for that purpose, **commit** him to the county jail of the county, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

1264. The judge of probate, upon the complaint on oath of any executor or administrator, may cite any person who shall have been entrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such **court,** and may **require** such **person to** render a full **account,** on oath, of any money, goods, chattels, bonds, accounts, or other papers belonging to such estate which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon, and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

1265. When any debtor of any deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may **compromise with** such **debtor** and give him a discharge, upon receiving a fair and just dividend of his effects.

1266. When any mortgagee of **real estate**, or any assignee of such mortgagee, shall die without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such **mortgage**, and the debt secured thereby, shall be considered as **personal assets** in the hands of the executor or administrator, and he may foreclose the same and have any other remedy for the collection of such debt which the deceased would have had if living, or may continue any proceedings commenced by the deceased for that purpose.

1267. In case of the redemption of any such mortgage, or the sale of the **mortgaged premises**, by virtue of a power of sale contained therein, or otherwise, the money paid thereon shall be received by the **executor** or administrator, and he shall thereupon **give** all necessary **releases** and receipts; and if, upon a sale of the mortgaged premises, the same shall be bid in by the executor or administrator for such debt, he shall be seized of the same for the same persons, whether creditors, next of kin, or others, who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

1268. Any **real estate so held** by an executor or administrator, or which may be purchased by him as such, upon a sale on execution, for the recovery of a debt due the estate, may be **sold** for the payment of debts or legacies and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor in the manner provided by law.

1269. If any **land so hled** by an executor or administrator, as mentioned in the preceding section, shall **not** be **sold** by him as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them in like manner as if it were real estate which the deceased held in his lifetime.

1270. When there shall be a **deficiency of assets** in the hands of an executor or administrator, and when the deceased shall, in his lifetime, have conveyed any real estate or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the **executor** or administrator may, and it shall be his **duty** to commence and prosecute to final judgment any proper action or suit at law, or in chancery, for the recovery of the same, and may recover, for the benefit of the creditors, all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Creditors of deceased may bring action against the executor who claims to have a chattel mortgage on effects of the estate and who is about to sell the same, and injunction will lie. 6, 503.

1271. **No executor** or administrator shall be **bound to sue** for such estate as mentioned in the preceding section, for the benefit of the creditors, **unless on** application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

1272. All **real estate** so recovered as provided in the two hundred and eleventh section of this chapter [1270] shall be **sold** for the payment of debts in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor from the probate court, and the proceeds of all goods, chattels, rights, and credits received as aforesaid shall be appropriated in payment of the debts of the deceased, in the same manner as other debts in the hands of the executor or administrator.

PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

1273. When letters testamentary or of administration shall be granted by any probate court, it shall be the duty of the probate **judge** to receive, examine, **adjust**, and allow all **claims** and demands of all persons against the deceased, giving the same notice as is required to be given by commissioners in this subdivision; *Provided*, That the parties interested, or either of them, shall have the right to demand that two or more suitable persons be appointed commissioners, in which case said commissioners shall receive, examine, and adjust all claims and demands against the estate, as provided for in this subdivision, except when the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law, in which case such assignment shall be deemed a full and final administration and bar to all claims against the estate. When such **commissioners** shall be appointed, it shall be their duty to appoint convenient times and places when and where they will meet for the purpose of examining and allowing claims; and within sixty days after their appointment they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in this state, or in any other manner which the court may direct.

Taxes on personal property may be filed as a claim against his estate. 16, 268 (20 N. W., 352). A judgment of account in a foreign state is "a claim." 8, 356.

1274. The judge of probate, in the commission issued to the commissioners, shall designate the paper in which such **notice** shall be **published** and the number of places in the several towns in which it shall be required to be posted, or other mode of notifying which he may deem necessary and proper.

1275. **If** any **commissioner** appointed by the probate court shall at any time **die**, remove out of the state, refuse, or become in any other way incapacitated to perform the duties of his appointment, the court may appoint another commissioner in his place, and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

1276. The probate court shall allow such **time** as the circumstances of the case shall require for the creditors **to present** their **claims** to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months, and the time allowed shall be stated in the commission.

1277. The probate **court** may **extend** the **time** allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

1278. On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, the **court** may, for good cause shown, **renew** the **commission** and allow further time, not exceeding three months, for the commissioners to examine such claims, in which case the commissioners shall personally notify the parties of the time and place of hearing, and, as soon as may be, make return of their doings to the probate court.

1279. In the case mentioned in the preceding section, if the **judge** of probate shall think proper, instead of renewing the commission he may appoint a time and place for examination and adjustment of such claim before himself, and cause personal notice thereof to be given to the parties, and in that case he shall proceed to examine and **adjust** such **claim** in like manner as the same might have been done by such commissioners.

1280. When a creditor against whom the deceased has had claims shall present a claim to the commissioners, the executor or administrator shall exhibit the claim of the deceased in **offset** to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be, but no claim barred by the statute of limitation shall be allowed by the commissioners in favor of or against the estate as a set-off or otherwise.

1281. The **commissioners** shall be **sworn** to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

1282. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make up a **report** of their doings to the probate court, embracing lists of the claims presented or exhibited in offset, and stating how much was allowed and how much was disallowed, together with the final balance, whether in favor of the creditor or the estate, and the report shall state particularly the manner of giving notice to the claimants.

1283. The commissioners shall have **power to try** and decide upon **all claims** which by law survive against or in favor of executors and administrators except claims for the possession or title of real estate, and may examine and allow all demands at their present value which may be payable at a future day, including claims payable in specific articles, and may set off such demands in the same manner in favor of the estate.

1284. Nothing in the preceding **section** shall be **construed** to prevent any executor or administrator from paying any debt which shall be payable at a future day according to the terms and at the time specified in the contract.

1285. Every person having a **claim** against a deceased person proper to be allowed by the *judge or commissioners, who shall not, after the giving of notice as required in the two hundred and fourteenth section of this chapter, exhibit his claim to the judge or commissioners within the time limited by the court for that purpose, shall be forever **barred** from recovering such demand or from setting off the same in any action whatever.

*"judge or" added 1873, G. S., p. 320.

1286. **No action** shall be commenced **against** the **executor** or administrator **except** actions to recover the possession of real or personal property, and actions for relief other than for the recovery of money only, and such actions as are permitted in this chapter; nor shall any attachment or execution be issued against the estate of the deceased until the expiration of the time limited by the court for the payment of the debts, except in the actions mentioned in this section, and in the cases provided for in section two hundred and seventy-two of this chapter [1331].

Amended 1873, G. S., p. 320. A mortgagee may foreclose his mortgage after the death of the mortgagor. **9**, 60; **5**, 504.

1287. All **actions** and suits which may be **pending** against a deceased person at the time of his death may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same; and if the judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

See **8**, 356.

1288. Nothing in this **chapter** shall be **construed** to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

1289. In such case the defendant may **set off** any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims will be set off in such action; and if final judgment shall be rendered in favor of the defendant, the same shall be certified, by the court rendering it, to the probate court, and the judgment shall be considered the true balance.

1290. When two or more persons shall be indebted on any **joint contract** or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners as if the contract had been joint and several, or as if the judgment had been against him alone; and the other parties to such joint contract may be compelled to contribute or pay the same, if they would have been liable to do so upon payment thereof by the deceased.

1291. The **commissioners** provided for by this subdivision shall **receive** two dollars per day as compensation for every day of actual service.

1292*. Any executor, administrator, or creditor may **appeal** from the decision of the judge or commissioners to the district court for the same county, if application for such appeal be made in writing and filed in the probate court within ten days after the entry of the decision in the records of the probate court.

These sections are in part repealed by implication by secs. 1114 to 1117 of ch. 11, "Courts." Appeal bond can be filed within thirty days, and no notice of appeal is necessary. **25**, 267 (41 N. W., 157); **27**, 861 (44 N. W., 40).

1293. In case of an **appeal** by a claimant against the estate, he shall, within ten days, give a **bond** to the adverse party, with sufficient security, to be approved by the probate judge and filed in his office, with a condition that he shall prosecute his appeal to effect and without unnecessary delay, and pay all damages and costs which may be awarded against him on the appeal. No executor or administrator shall be required to enter into bond to entitle him to appeal.

Amended 1873, G. S., p. 321.

1294. **No appeal** shall be allowed from the decision of the judge or commissioners **except** in the following cases: I. When such judge or the commissioners shall disallow any claim or set-off in whole or in part, to the amount of twenty dollars. II. When the judge or commissioners shall allow any claim or set-off in whole or in part, and the sum allowed being objected to shall amount to twenty dollars.

1295. The party appealing shall, after the appeal is taken, give **notice of** such **appeal** and of the hearing thereof in the district court, by service of notice on the adverse party, or if personal service cannot be had, by causing the same to be published for two successive weeks in some weekly newspaper of general circulation in the county, which service or publication must be complete at least ten days before the next term of such court, otherwise the notice must be given for the next succeeding term thereafter.

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*Secs. 1292 to 1301 amended 1873, G. S., pp. 321-3.

1296. The **party appealing** shall, on or before the first day of the term of said court next after the expiration of the time within which notice might have been given as required in the last preceding section, procure and **file** in the district court a certified **copy of** the **bond,** if any given on appeal, and of the record of the allowance or disallowance appealed from, and of the claim or set-off filed; together with the proper evidence that notice has been given as aforesaid to the adverse party.

1297. The **district court** shall proceed to a trial and determination of the case in like manner as upon appeals brought from the judgments of justices of the peace; and such court may **direct** an **issue** to be made up between the parties when it shall be deemed necessary; and questions of law may be carried to the supreme court, and costs may be allowed or denied in the discretion of the court.

1298. The **final decision** and judgment in cases so appealed shall be **certified** to the probate court, and procedings shall be had thereon necessary to carry the judgment of the appellate court into execution.

1299. If any claimant, appealing on account of the disallowance of his claim by the judge or commissioners, shall fail to enter such appeal in the district **court** as herein required, or shall in any way fail to prosecute his action on his claim in the district court, such court **may dismiss** the **appeal,** or a certificate may be filed in the probate court, as the case may require, in like manner as in cases of appeals from judgments of justices of the peace, and thereupon such claim shall be forever barred, and the probate court shall proceed in the same manner as if such appeal had never been taken.

1300. If the person objecting to a claim and appealing on account of the allowance thereof shall neglect to prosecute his appeal as aforesaid, the **court** to which the appeal shall be taken **may dismiss** the **appeal,** or a certificate may be filed as aforesaid, as the case may require, and thereupon the probate court may proceed in the same manner as if the appeal had never been taken, or on motion of the adverse party, and upon his producing an attested copy of the record and papers showing such appeal, the district court shall cause the appeal to be docketed and affirm the allowance appealed from, and enter judgment for costs against the appellant.

1301. When an executor or administrator declines to appeal from the decision of the judge or commissioners, any **person interested** in the estate as creditor, devisee, legatee, or heir **may appeal** from such decision by filing a written application therefor, within ten days after the expiration of the time allowed to such executor or administrator for the filing of his application as hereinbefore provided; and the same proceedings shall be had in the name of the executor or administrator as if the appeal had been taken by him; *Provided,* That the person appealing in such case shall give bond, to be approved by the judge of probate and filed in his office, as well to secure the estate from damages and costs as to secure the intervening damages and costs to the adverse party; and actions upon such bond may be maintained by the party sustaining damages thereby.

1302. The said **commissioners** shall file with their **report** all the claims and **offsets** presented to and passed upon by them, and in the hearing and determination upon such claims and offsets the judge or commissioners shall be governed by the same rules of evidence as prescribed in civil actions in the district court, and depositions may be taken, filed, and used in evidence before the probate court as in actions in the district court; and such depositions shall be transmitted to the district court with the transcript used in cases taken by appeal to said court, if such depositions are sought to be used upon the trial of such cause in the district court.

LIMITATION OF TIME FOR PAYING DEBTS.

1303. The probate court, at the time of granting letters testamentary or letters of administration, shall make an order allowing to the executor or administrator a **time** for disposing of the estate and **paying** the **debts** and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

1304. The county **court** may, on application of the executor or administrator, from time to time, as the circumstances of the estate may require, **extend** the **time** for the payment of debts and legacies, not exceeding six months at a time, nor so that the whole time allowed the original executor or administrator shall exceed three years *and at the expiration of three years such executor or administrator shall at once settle such estate as provided in section 282 of this act [1341].

All after * added 1887, p. 386.

1305. When an executor or administrator shall make application to have the **time** for paying debts and legacies **extended** beyond one year and six months from the time of granting letters testamentary or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of application and of the time and place of hearing to be given to all persons interested, by publication, three weeks successively, in some newspaper to be designated by the court, and no such order extending the time shall be granted unless such notice shall have been previously given.

1306. **When** an **executor** or administrator shall **die,** be removed, or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court shall, when necessary, make an order allowing to such new administrator a time for the disposing of the estate unadministered, and paying the debts and legacies, which time shall not, in the first instance, exceed one year from the time such new administrator shall be appointed; but such time may be extended in like manner and upon like notice as required in case of the original executor or administrator; and nothing contained in this subdivision shall be construed to take away the liability of an executor or administrator to make immediate payment when demanded, upon a decree for the distribution of assets among creditors, legatees, or heirs at law.

Amended 1873, G. S., p. 324.

OF THE DISTRIBUTION OF ASSETS AMONG THE CREDITORS, AND OF INSOLVENT ESTATES.

1307. If, after the **report** of the commissioners and ascertaining the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to **pay** all the **debts,** he shall pay the same **in full** within the time limited or appointed for that purpose.

1308. If the **assets** which the executor or administrator may have received and which can be appropriated to the payment of debts shall **not** be **sufficient,** he shall, after paying the necessary expenses of administration, **pay** the **debts** against the estate in the following **order**: *First*—The necessary funeral expenses. *Second*—The expenses of the last sickness. *Third*—Debts having a preference by the laws of the United States. *Fourth*—Debts due to other creditors.

Treasurer cannot distrain personal property for taxes due from deceased in his lifetime. 8, 185.

1309. If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a **dividend** in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

1310. After the return of the report of the commissioners, and at or before the expiration limited for the payment of debts, the probate **court** shall make an order or **decree** for the **payment** of the debts and the distribution of the assets which may have been received by the executor or administrator at the time fixed for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this subdivision.

1311. If an **appeal** shall have been taken from the decision of the commissioners, and shall remain undetermined, the probate court may **suspend** the **decree** for the payment of debts mentioned in the preceding section, or may order a distribution among the creditors whose claims have been allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which may have been disputed and appealed.

1312. When the **disputed claim** shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent and in the same proportion as the claims of other creditors.

1313. If the whole of the debts shall not have been paid by the first **distribution**, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

1314. Whenever a decree shall have been made by the probate court for the distribution of the assets among the creditors, the **executor** or administrator of the estate, after the time of payment shall arrive, shall be personally **liable** to the creditors for their debts, or the dividend thereon, as for his own debts, or he shall be liable on his bond, and the same may be put in suit on the application of the creditor whose debt or dividend shall not be paid as above mentioned.

1315. When the **time** for paying the debts of a deceased person shall be finally **limited** by order of the probate court or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause **notice** to be given to the creditors of the time appointed or limited for the payment of such debts, which notice shall be given by publishing the same at least three weeks successively in some paper to be designated by the court, or in such other manner as the court may direct.

1316. If, after **notice** shall have been given, as provided in the preceding section, any **creditor** shall neglect to demand from the executor or administrator his debt or the dividend thereon within two years from the time so limited for the payment of the debts, or if the notice shall have been given after such time, within two years from the last publication, the claim of such creditor shall be forever **barred.**

Does not apply to mortgages. 5, 504.

CONTINGENT CLAIMS.

1317. If any person shall be liable as security for the deceased, or have any other **contingent claim** against his estate which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented, with the proper proof, to the probate court or to the commissioners, who shall state the same in their report, if such claim was presented to them.

1318. If the court shall be satisfied, from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands sufficient to pay such **contingent claim,** when the same shall become absolute; or, if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of other creditors.

1319. If such **contingent claim** shall **become absolute,** and shall be presented to the probate court, or to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be allowed by the probate court upon due proof, or it may be proved before the commissioners already appointed or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report; and the persons interested shall have the same right of appeal as in other cases.

1320. If such **contingent claim** shall be allowed, as mentioned in the preceding section, or established on appeal, the creditors shall be entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator shall be sufficient for that purpose; but if the claim shall not be finally established, as provided in the preceding section, or if the assets retained in the hands of the executor or administrator shall not be wholly exhausted in payment of such claim, such assets, or the residue of them, shall be disposed of, by order of the probate court, to the persons entitled to the same according to law.

1321. If the **claim** of any person shall accrue or **become absolute** at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same at any time within one year after it shall accrue or become absolute; and if established in the manner provided in this subdivision, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay, and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

1322. When a claim shall be presented within one year from the time when it shall accrue and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the **creditor** shall have the **right to recover** such part of his claim as the executor or administrator has not assets to pay, **against the heirs,** devisees, or legatees who shall have received sufficient real or personal property from the estate.

1323. If any **action** shall be commenced **against** an **executor** or administrator on such claim as mentioned in section two hundred and sixty-two [1321], and for the payment of which sufficient assets shall not have been retained, as before provided, the executor or administrator may give notice, under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

1324. If it shall appear on the trial of such action that the defendant had fully administered at the time the claim was presented, and had no assets which could lawfully be appropriated for that purpose, he shall be discharged, and shall have **judgment** for his costs; but if it shall be fonnd that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

1325. When the **heirs,** devisees, or legatees shall have received real or personal estate, and shall be liable for any debts, as mentioned in this subdivision, they shall be liable in proportion to the estate they may have respectively received; and the creditor may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees, or legatees, to the amount of the estate they may have respectively received; but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

1326. If, by the will of the deceased, any part of his estate, or any devisees or legatees, shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only, according to the will.

1327. If all the persons liable for the payment of any such debt shall not be included in any such action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred, but the court before which it shall be pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

1328. If more than one person shall be liable, as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and and the persons liable shall dispute the debts or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the district court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

1329. If any of the heirs, devisees, or legatees shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

1330. When any of the heirs, devisees, or legatees shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the cases of devisees and legatees in this chapter.

1331. If the giving of notice for the examination and allowance of claims against the estate, before the judge or commissioners, shall in any case be omitted for the period of one year after the granting of letters testamentary or administration, any person having any contingent or other lawful claim against a deceased person may at once commence an action therein, and prosecute the same against the executor, administrator, heirs, devisees, or legatees, as the same may be, who shall have received real or personal property from the estate; *Provided*, That in case notice to creditors shall have not been given for the period of one year, as above provided, any person having any contingent or other lawful claim against a deceased person, and shall neglect to commence action thereon against the executor, administrator, heirs, devisees, or legatees, as the same may be, who shall have received real or personal property from the estate within five years next after the granting of letters testamentary or administration, the same shall be forever barred; and in all cases a creditor having a lien upon the real or personal estate of the deceased by judgment, execution, or attachment previous to his death may proceed to enforce said lien the same as if such death had not occurred.

Rewritten 1887, p. 386. Mortgagee cannot be compelled to relinquish his mortgage and share in general assets of the estate. 9, 60 (1 N. W., 867).

1332. In no other case, except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payments, except in the case provided for in the preceding section.

RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

1333. Every **executor** and administrator shall be **chargeable** in his account with the whole of the goods, chattels, rights, and credits of the deceased which may come to his possession; also, with all the proceeds of the real estate which may be sold for the payment of debts and legacies, and with all the interest, profit, and income that shall in any way come to his hands from the estate of the deceased.

1334. Every executor and administrator shall account for the **personal estate** of the deceased as the same shall be appraised, except as provided in the following section.

1335. An executor or administrator shall **not** make **profit by increase,** nor suffer loss by the decrease or destruction without his fault, of any part of the personal estate, and he shall account for the excess when he shall sell any part of the personal estate for more than the appraisal, and if he shall sell any for less than the appraisal he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

1336. The probate court, on the application of the executor or administrator, may, at any time, order the **personal estate** to be **sold** at private sale, or at public auction, when it shall appear to be necessary for the purpose of paying debts or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this state; or the court may order such personal estate to be sold, either at private sale, or public auction, as the executor or administrator may find most beneficial. If the order be to sell at public auction, the probate court shall direct the mode of giving notice of the time and place of sale.

1337. When the **executor** or administrator shall sell personal estate under an order of the probate court, he shall **account** for the same at the price for which it shall be sold.

1338. No executor or administrator shall be accountable for any **debts due** to the **deceased** if it shall appear that they remain uncollected without his fault.

1339. The executor or administrator shall also be **accountable for** the **income** of the real estate while it shall remain in his possession; and if he shall use or occupy a part of it, he shall account for it as shall be agreed upon between him and the parties interested, or adjudged by the court with their assent; and if the parties shall not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons to be appointed by the probate court, whose award, being accepted by such court, shall be final.

1340. When an **executor** or administrator shall neglect or unreasonably delay to raise money, by collecting the debts, or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed **waste**, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

1341. Every **executor** or administrator shall render an **account** of his administration within one year from the time of his receiving letters testamentary or of administration, unless the court shall give permission to delay, in consideration that the time for selling the estate and paying debts shall be extended; and he shall render such further account of his administration from time to time as shall be required by the court, until the estate shall be wholly settled; *Provided*, That at the expiration of the year from the time of the granting of letters testamentary or administration, such executor or administrator shall at once, and the court is hereby directed to compel such executor or administrator to at once make final settlement in such estate; *Provided further*, That if by reason of any suit at law or equity, then pending in any court of law in which said estate is interested, and by reason thereof a full settlement of such estate cannot then be had, a settlement of such estate shall be had as far as may be, and the administration of such estate may be continued for the purpose only of contesting such suits to a full settlement. Upon the hearing of the accounts of any executor or administrator he may be examined on oath upon any matter relating to his account, and witnesses in like manner may be examined on behalf of such executor or administrator, or other party interested in such account. Such accounts shall have annexed thereto the oath of the executor or administrator to the effect that such account is in all respects just and true, and that to the best of his knowledge and belief he has therein accounted for all the estate and effects of the deceased that have come into his possession or knowledge. Such executor or administrator shall, at least seven days before the time fixed for hearing such account, file in the county court all vouchers to be used in support thereof, and any voucher not so filed cannot be used in support of such account. Nothing contained in this section shall be construed to take away the power of the county court to settle and allow an account not certified as aforesaid, but in such case the burden of proof as to the correctness of such account and of each item thereof shall rest upon such executor or administrator.

Rewritten 1887, p. 387.

1342. The **executor** or administrator shall be allowed all necessary **expenses** in the care, management, and settlement of the estate, and for his services such fees as the law provides, together with all extra expenses; *Provided*, That when the deceased shall, by his will, make some other provision for the compensation of his executor, that shall be deemed full **compensation** for his services, unless he shall, by a written instrument filed in the probate court, renounce all claim to the compensation provided by the will.

1343. When no such compensation shall be provided by the will, or the executor shall renounce all claim thereto, he shall be allowed **commission** upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of the court for the payment of debts, as follows: For the first thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent; and for all above five thousand dollars, at the rate of one per cent; and the same commissions shall be allowed to administrators; and in all cases such further allowances may be made as the judge of probate shall deem just and reasonable for any extraordinary services not required of an executor or administrator in the common course of his duty.

1344. Every **executor** or administrator may be **cited** by the probate court to render account of his administration at any time after the expiration of six months from the time of his receiving letters testamentary or of administration, when it is made to appear to the satisfaction of the probate court, by the application, under oath, of any party interested in the estate, that there are assets in the hands of such executor or administrator, the whole or any portion of which ought to be immediately decreed to be paid to such applicant. Every executor or administrator failing to render his account within one year, as required by section two hundred and eighty-two of this chapter [1341], may be cited by such court to render such account upon the application, under oath, of any party interested in the estate. When a new administrator shall be appointed in the place of any former executor or administrator of the same estate, the probate court shall have power, upon the application of such new administrator, to cite such former executor or administrator to render account of his administration; and such order or decree thereupon as may be proper shall be made by such court, requiring such former executor or administrator to turn over and deliver to such new administrator any estate or effects remaining in the hands of such former executor or administrator unadministered. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, or shall render a false account, he shall be liable on his bond for all damages that may accrue, and such court may also proceed against him as for a contempt, in like manner as in cases in other courts of record. An executor or administrator shall not be cited as herein provided, when there shall be in force an order of such court giving him permission to delay the rendering of his account.

Rewritten 1873, G. S., p. 332.

1345. When **costs** are allowed in any case against an executor or administrator, execution shall not issue against tne estate of the deceased in his hands therefor, but shall be awarded against him as his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding in which the costs shall be taxed shall have been prosecuted or resisted without just cause.

1346. Before the **administration** account of any executor or administrator shall be allowed, **notice** thereof shall be given to all persons interested, of the time and place of examining and allowing the same, and such notice may be given personally to such persons as the judge of probate shall judge to be interested, or by public notice under the direction of the court; **Provided,* That if notice to creditors to present their claims and demands against such estate has been duly given as provided by law, and such time has fully expired, and no claims have been filed against such estate, or in case claims have been so filed against such estate, but the same have been fully paid and satisfied by such executor or administrator under the order of the court, and such estate is fully solvent, then, in either case, the county court may, on the written request of the heirs of such estate, settle with such executor or administrator, without either public or personal notice being given to such heirs of such settlement, shall be as valid as though public and personal notice had been given as required by law; *Provided further,* That nothing in this section contained shall be construed to include any debt against any deceased person which may be secured by a mortgage or other lien by reason of which such debt may be secured, and in such case such creditor may rely on his security; *Provided further,* That nothing herein contained shall be construed to prevent any creditor from prosecuting such claim to the court for allowance against such estate if an administrator thereof has been appointed within three years next after the death of such person.

All after * added 1887, p. 389.

PARTITION AND DISTRIBUTION OF ESTATES.

1347. Before any partition or division of any estate among the heirs, devisees, or legatees, as provided in this subdivision, the probate court shall make an **allowance for** the necessary expenses of the support of any **children** of the deceased under seven years of age; and it shall be the duty of the executor or administrator to retain in his hands sufficient estate for that purpose, except when some provision is made by will for their support.

Amended 1873, G. S., p. 333. See **26**, 68 (41 N. W., 1065).

1348. After the payment of the debts, funeral charges, and the expenses of administration, and after the **allowances made** for the expense of the maintenance of the family of the deceased, and for the support of the children under seven years of age, and after the assignment to the widow of her dower, and of her share in the personal estate, or when sufficient assets shall be reserved in the hands of the executor or administrator for the above purposes, the county court shall, by a decree for that purpose, assign the **residue** of the estate, if any, to such other persons as are by law entitled to the same.

Amended 1881, p. 234.

1349. In such **decree** the court shall name the persons, and the proportions or parts to which each shall be entitled, and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same.

1350. Such decree may be made on the application of the executor or administrator or of any person interested; but no heir, devisee, or legatee shall be entitled to a decree for his share until payment of the debts and allowances and expenses mentioned in the preceding section shall have been made or provided for, unless he shall give a **bond** to the county judge, with such surety or sureties as he may direct, to secure the payment of the just proportion of such heir, devisee, or legatee of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

Amended 1881, p. 234, and secs. 293 to 310 of old law repealed.

1351. When such estate shall consist in part of real estate, and shall descend to two or more heirs, devisees, or legatees, and the respective shares shall not be separate and distinguished, **partition** thereof may be made as provided by law.

Rewritten 1881, p. 235.

1352. Any person aggrieved by an order, decree, or denial of a court in pursuance of the provisions of this subdivision, may **appeal** therefrom as provided for in other cases.

1353. The **partition,** when finally confirmed and established, shall be **conclusive** on all the heirs and devisees, and all persons claiming under them, and upon all persons interested.

PROBATE BONDS, AND THE PROSECUTION OF THEM.

1354. All **bonds** required by law to be taken in or by order of the probate court shall be for such sum and with such sureties as the judge of probate shall direct, except when the law otherwise prescribes; and such bonds shall be for the security and benefit of all persons interested, and shall be taken to the judge of probate, except where they are required by law to be taken to the adverse party.

Omission to personally name judge not fatal. **9**, 293 (2 N. W., 884). Principal's name may be signed by agent authorized in writing. **3**, 213.

1355. A **suit** may be brought **on** the **bond** of an executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator shall neglect to pay the same when demanded.

1356. Such a suit may be **brought by** any person as **next of kin** to recover his share of the personal estate, after a decree of the probate court declaring the amount due to him, if the executor or administrator shall fail to pay the same when demanded.

Suit may be brought in the name of the probate judge. **9**, 290 (2 N. W., 884).

1357. When it shall appear, on the representation of any person interested in the estate, that the **executor** or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee, or other person aggrieved by such **maladmintstration** to bring an action on the bond.

1358. Whenever an executor or administrator shall refuse or omit to perform any order or decree made by a judge of probate having jurisdiction, for rendering an account or upon a settlement of any account, or for the payment of debts, legacies, or distributive shares, or for the delivery of specific legacies, such probate judge may authorize the party aggrieved by such refusal or omission to bring an **action on** the **bond** of such executor or administrator.

Amended 1873, G. S., p. 338.

1359. In all suits upon such bonds as are mentioned in this subdivision the **action** shall be brought in the name of the party authorized to bring the same, or in the name of the guardian of such party; and in such action the **plaintiff** shall be entitled to recover such **damages** as he may have sustained, to the amount of the bond and no more; and a **judgment** in favor of a party for one delinquency shall not preclude the same, or another party, from an account on the same bond for other delinquencies; but the aggregate of all the recoveries on such bond cannot exceed the amount for which the bond was given.

Action was formerly brought in name of probate judge. Amended 1873, G. S., p. 338.

1360. On the application of any person authorized by this subdivision to commence a suit on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fee, a certified **copy of** the **bond,** together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

1361.* When an executor or administrator shall, for any of the causes mentioned in this chapter, be removed from his trust, or shall die, or his authority shall otherwise be extinguished, and a **new administrator** shall be appointed, such new administrator shall be the party entitled to bring an action upon the bond of the former executor or administrator, for any damages sustained by reason of his neglect or refusal, or the neglect or refusal of his representatives, to turn over to such new administrator, pursuant to the order or decree of the probate court, or according to law, any estate remaining unadministered.

Administrator *de bonis non* should charge himself with amount of penalty, original administrator's bond, and hold the same as assets in his hands for the payments of the debts of the estate. **21,** 239 (31 N. W., 739). Under facts stated, *held* that estate of former administrator liable to new, would be liable only after settlement of former's accounts and allowance of just credits. **24,** 713 (40 N. W., 137).

1362. When the guardian of a minor, insane person, or spendthrift shall be removed from his trust, shall die, or his authority shall otherwise be extinguished, and a new guardian shall be appointed, such **new guardian** shall be the party entitled to bring an action upon the bond of the former guardian, for any damages sustained by reason of his neglect or refusal, or the neglect or refusal of his representatives, to turn over to such new guardian, according to the order or decree of the probate court, or according to law, any estate of the ward.

1363. When an **action** is brought by any creditor, heir at law, next of kin, or legatee, or devisee, upon the bond of any executor or administrator, as provided in this chapter, the **judgment** thereon, if in favor of the plaintiff, shall be deemed a satisfaction, so far as such plaintiff is concerned, of so much of such order or decree, for the omission or refusal to perform which the judgment was rendered.

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*Secs. 1361 to 1365, rewritten 1873, G. S., pp. 338-9.

1364. When an action is brought pursuant to section three hundred and eighteen of this chapter, by any new administrator, the **money collected** therein by such new administrator shall be **assets** in his hands, to be administered according to law; and the probate court may make such new order or decree for the distribution thereof as the circumstances of the case may require.

1365. Whenever an **action** is rightfully brought by any creditor, heir at law, next of kin, or legatee, pursuant to the provisions of this chapter, the same shall, so far as the causes of action therein are concerned, be a **bar** to any other cause of action which might have accrued under the provisions of this chapter, but no farther; nor shall such bar arise from the failure of any such creditor, heir at law, next of kin, legatee, [or] devisee to bring an action after the same shall have accrued and before the appointment of an administrator.

CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

1366. When any person who is bound by a **contract** in writing **to convey** any real estate shall die before making the conveyance, the court may make a decree authorizing and directing the **executor** or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled **to execute** such conveyance.

In this and following sections of the act, jurisdiction changed from probate to district court. 1867, p. 127.

1367. On the presentation of a **petition,** by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the judge shall appoint a time and place of hearing such petition, and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least six successive weeks before such hearing, in such newspaper or newspapers in this state as he may deem necessary.

1368. At the time and place appointed for such **hearing,** or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear before the court and defend against such petition, and the court may examine on oath the petitioner, and all others who may be produced before them for that purpose.

1369. After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of the district court shall be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of this subdivision, he shall thereupon make a **decree** authorizing and directing the executor or administrator to make and execute a conveyance thereof to the petitioner.

1370. Any person interested may **appeal** from such decree to the district court for the same county, as in other cases, but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the direction contained in such decree; and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

1371. If, upon a hearing in the district court as heretofore provided, the judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall **dismiss** the **petition** without prejudice to the rights of the petitioner, who may at any time thereafter have a bill in chancery to enforce a specific performance of the contract, as hereinafter provided.

1372. Whenever any person who is bound by any **contract to convey** any real estate shall die before making the conveyance, the person entitled thereto may have a bill in the court of chancery to enforce a **specific performance** of the contract, by his heirs, devisees, or the executor or administrator of the deceased party who made such contract.

Where agent of creditors bids in property at execution sale and afterwards receives a sum of money for releasing the property to the judgment debtor, though sale confirmed and deed made to agent, courts will decree a conveyance. 2, 375.

1373. The **court of chancery** shall hear and determine every such case brought in said court, according to the course of proceedings in chancery, and shall make such decree therein as justice and equity shall require.

1374. If it shall appear that the complainant is entitled to have a conveyance, the **court** may **authorize** and require the **executor** or administrator of the deceased party to **convey** the estate in like manner as the deceased party might and ought to have done if living; and if the heirs or devisees of such deceased person, or any of them, shall be within this state, and competent to act, the court may require them, or either of them, instead of the executor or administrator, to join in such conveyance with the executor or administrator.

1375. Every **conveyance** made in pursuance of a decree of the district court, or the court of chancery, as provided in this subdivision, shall be **effectual** to pass the estate contracted for as fully as if the contracting party himself was still living and then executed the conveyance.

1376. A copy of the **decree** for conveyance, made by the court and duly certified and **recorded** in the office of the county clerk in the county where the lands lie, or a copy of the decree of the court of chancery for that purpose, duly certified by the clerk or register of that court, and recorded as aforesaid, shall give the person entitled to such conveyance a right to the possession of the lands contracted for and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

1377. The recording of any **decree,** as provided in the preceding section, shall not prevent the court making such decree from **enforcing** the same by any proper process according to the course of proceedings therein.

1378. If the person to whom the conveyance was to be made shall die before the commencement of proceedings according to the provisions of this subdivision, or before the conveyance is completed, any person who would have been entitled to the estate under him as **heir,** devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may **commence** such **proceedings,** or may prosecute the same, if already commenced, and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

Secs. 1379 to 1381. "An act providing for the conveyance of real estate by executors and administrators in certain cases." 1889, p. 490. In force March 12.

1379. When a person who has entered into a written contract for the sale and conveyance of an interest in land dies before the completion thereof, and his **executor,** administrator, or other legal representative desires to complete the contract, he may file a **petition** therefor in the district court of the county in which the land or any part thereof is situated; the application for hearing on such petition, and service of notice of the pendency of such action, shall be made in the same manner as in actions against the representatives of a decedent **to compel** the **conveyance** of land, as provided in section 324 of chapter 23 of the Compiled Statutes, entitled "Decedents" [1367], and the heirs at law, devisees, or other legal representatives of the deceased vendor, when not plaintiffs, must be made defendants in the action.

1380. When there is **more than one** of such contracts so made by such deceased vendor in his lifetime, although with different persons, and for different tracts of land, which the legal representatives of such deceased vendor desire to complete, such contracts may all be described and **included** in one petition, and deeds may be ordered to the different persons entitled thereto, as provided in the next section.

1381. The **court,** after causing to be secured to, and for the benefit of the estate of the deceased its just part and proportion of the consideration of the contract or contracts, may **authorize** the executors, administrator, or other legal representative, to complete the same, and to execute a deed or **deeds,** for and on behalf of the heirs at law, to the purchaser or purchasers which shall recite the order, and be as binding on the heirs at law, and all other persons interested, as if it or they had been made by the deceased in his lifetime.

Secs. 1382 to 1385. "An act in reference to executors and administrators and probate judges, and for disposing of the real estate of decedents, spendthrifts, or minors." 1869, p. 169. In force February 15.

1382. **When** an **executor** or administrator shall **die,** be removed from office, or resign, or when his letters shall be revoked during the pendency of any suit in which he is a party, the suit may be prosecuted by or against the executor or administrator appointed in his place, if any shall be appointed, in like manner as if it had originally been commenced by or against such last executor or administrator.

1383. An **executor** or administrator duly **appointed in** any **other state** or county may commence and prosecute any action or suit in any court in this state, in his capacity of executor or administrator, in like manner and under like restrictions as a non-resident may be permitted to sue; **Provided,* That in case any executor or administrator shall have been appointed in this state, such person only shall be entitled to commence and prosecute actions or suits within this state in his capacity as such executor or administrator.

All after * added 1885, p. 247. Administrator may commence suit and action may be revived in name of his executor or administrator. 6, 522. See 16, 420 (20 N. W., 266).

1384. Every **executor** or administrator who may have given bond in this state, with surety agreeably to law, shall be authorized in all cases of **appeal** from one court to another, by him made, to prosecute the same **without** filing an appeal **bond,** such appeal to be prosecuted to the district court as appeals are now taken from courts of justices of the peace.

1385. The **judge** of the district court of the state may, upon the application of an executor, administrator, or guardian, to sell or dispose of the real estate of decedents, spendthrifts, or minors, hear and determine the same at chambers in vacation; *Provided,* That in all cases where the judge shall **order** a **sale** of any real estate, while sitting **at chambers,** he shall make out in writing a copy of said order, and cause the same to be filed in the office of the clerk of said court, and said clerk shallthere upon record said order, in the record book of said court, before any sale shall be made as aforesaid.

Secs. 1386 to 1389. "An act providing for selling the interests of a deceased partner and settling the accounts between him and his surviving partners." 1883, p. 223. In force February 28.

1386. The county court which shall have issued letters testamentary or of administration upon the estate of a deceased partner may, upon due notice to all parties interested, authorize the executor or administrator of such deceased partner to sell at public auction his interest in the **partnership property**, and the surviving partner may be a purchaser at such sale the same as any disinterested party. The administrator or executor making such sale shall report his proceedings thereon to the court, and upon due notice to all persons interested, the court may confirm the sale, or, good reason therefor appearing, may set the same aside and order another sale. The court shall also direct the execution of such paper titles to the property sold as the circumstances require.

1387. The **executor** or administrator making such sale shall **account** for the partnership interest so sold at the price at which it shall be sold.

1388. The **executor** or administrator of a deceased partner shall settle with the **surviving partner** all the dealings and transactions of the partnership, as well as those remaining unsettled before the death of the deceased partner, as of the said parties thereafter, and shall present to the county court appointing such executor or administrator a full statement of the matter and manner of such settlement, and upon due notice to all parties interested, the said court shall examine, review, correct, approve, or disallow such settlement. But if the said legal representatives of such deceased partner and the surviving partner cannot agree upon such settlement, the accounts of the dealings and transactions of the partnership shall be settled as heretofore.

1389. In case the **executor** or administrator of a deceased partner be **also** his **surviving partner**, the county court appointing him shall appoint a special administrator to discharge the duties herein provided, and his powers shall be limited thereto. Such appointment shall be made upon the same proceedings as are provided by law for the appointment of special administrators, when there is delay in the granting general letters testamentary or of administration.

Secs. 1390 and 1391. "An act to permit county judges to grant authority to administrators of intestate estates to mortgage real estate for certain purposes and if necessary appoint special administrators therefor." 1887, p. 390. In force April 2.

1390. The county judge may, upon proper showing by petition supported by competent testimony, showing that the best interests of the estate demand it, grant **authority** to the administrators of intestate estates to **mortgage** any **real estate** belonging to such estate, where mortgages existing on such real estate are due, or are about to become due, and there is no money belonging to such estate with which to pay or redeem such mortgages; *Provided*, That in no instance shall authority be granted by such county judge to such administrators to mortgage such real estate for a greater sum than the amount secured by the original mortgage.

1391. That where no administrator has been appointed the county judge may appoint a special **administrator** to carry out the provisions contained in section 1 of this act.

Secs. 1392 and 1393. "An act authorizing a recovery of **damages** by the personal representatives of a person whose death is caused by the wrongful act of a person, company, or corporation."* 1873. In force February 25. G. S., p. 272.

1392. That whenever the **death** of a person shall be caused by the wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, in

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This statute is substantially a re-enactment of Lord Campbell's act of 1846 (9 and 10 Vict., ch. 93), which is the model of nearly all American legislation on the subject. See Cooley, Torts, 263.

respect thereof, then, and in every such case, the person who, or company or corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

1393. That every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries, resulting from such death, to the wife, and next of kin of such deceased person, not exceeding the sum of five thousand dollars; *Provided,* That every such action shall be commenced within two years after the death of such person.

Petition under this section must allege what relatives left. **17,** 573 (24 N. W., 219). Action for causing death must be brought by personal representatives of deceased. **12,** 3 (10 N. W., 411). Husband is not "next of kin." It must appear that there is a widow, or some person "next of kin" to entitle the administrator to recover. **18,** 284 (13 N. W., 401). It is no defense that the deceased came to his death while working for defendant on Sunday. **18,** 700 (26 N. W., 347).

CHAPTER 13.—DOMESTIC RELATIONS.

Secs. 1394 to 1410 formed ch. 34, R. S. 1866, p. 254, entitled "Marriage."

1394. In law, marriage is considered a **civil contract,** to which the **consent** of the parties capable of contracting is **essential.**

1395. At the time of the marriage the male must be of the **age** of eighteen years or upwards, and the female of the age of sixteen years or upwards.

1396. **Marriages** are **void**: *First*—When one party is a white person and the other is possessed of one-fourth or more negro blood. *Second*—When either party has a husband or wife living at the time of marriage. *Third*—When either party is insane, or an idiot, at the time of marriage. *Fourth*—When the parties stand to the relation to each other of parents and children, grandparents and grandchildren, brother and sister, of half as well as whole blood, uncle and niece, aunt and nephew; and this subdivision extends to illegitimate as well as legitimate children and relatives.

1397. Previous to the solemnization of any marriage in this state, a **license** for that purpose must be obtained from the probate judge of the county wherein the marriage is to take place.

1398. When either party is a **minor,** no license shall be granted without the verbal consent, if present, or **written consent,** if absent, **of** the father, if living, if not, then of the mother, of such minor, or of the **guardian** or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

1399. When application shall be made for a **license** to the probate judge he shall upon the granting of such license **state** therein the Christian and surnames of the fathers of both parties, the Christian and maiden names of the mothers of both parties, the Christian and surnames of the parties, the residence of both parties, their places of birth, their respective ages, their color, which license shall, prior to the issuing thereof, be entered of record, in the office of the probate judge, in a suitable book to be provided for that purpose.

Amended 1869, p. 167.

1400. If, on such testimony being given, it shall appear that either of the **parties** is legally **incompetent** to enter into such contract, or that there is any impediment in the way, or, if either party is a minor, and the consent mentioned in section five shall not be given, the said judge shall refuse to grant a license.

1401. Every judge and justice of the peace, and every ~~preacher~~ of the gospel, authorized by the usages of the church to which he belongs, to solemnize marriages, may perform the marriage **ceremony** in this state; *and every such **person performing** the marriage ceremony shall enter upon the said license a full return of his proceedings in the premises, which return shall be made to the probate judge of the proper county, within three months after such marriage ceremony has been performed, and which return the said probate judge shall record or cause to be recorded in the same book where the said marriage license is recorded.

Amended and all after * added 1869, p. 168.

1402. In the **solemnization** of marriage no particular form shall be required except that the parties shall solemnly declare, in the presence of the magistrate or minister and the attending witnesses, that they take each other as husband and wife;

and in any case there shall be at least two witnesses, besides the minister or magistrate present at the ceremony.

Not indispensable that clergyman or magistrate should be present to authorize contract; it may be made in one state and if followed by celebration and cohabitation in another, is valid. **24**, 434 (39 N. W., 450).

1403. Whenever a marriage shall have been solemnized pursuant to the provisions of this chapter, the minister or magistrate who solemnized the same shall give to each of the parties, on request, a **certificate**, under his hand, specifying the names, ages, and places of residence of the parties married, the names and residence of at least two witnesses who were present at such marriage, and the time and place thereof.

1404. Every person having authority to join others in marriage shall, within three months after the solemnization of any such marriage, make and deliver to the **probate judge** of the county in which the marriage took place, a **certificate** containing the particulars mentioned in the preceding section.

1405. The **probate judge** of each county in the state shall **record** all such **returns** of such **marriages** in a book to be kept for that purpose, within one month after receiving the same.

1406. **[Violation of act—Penalty.]**—If any justice, minister, or other person whose duty it is to make and transmit to the probate judge such certificate, shall neglect to make and deliver the same; or if the probate judge shall neglect to to record such certificate; or if any person shall undertake to join others in marriage, knowing that he is not legally authorized so to do, or knowing of any legal impediment to the proposed marriage; or if any person authorized to solemnize any marriage shall willfully and knowingly make a false certificate of any marriage to the probate judge; or if the said probate judge shall willfully and knowingly make a false record of any certificate of marriage to him made, he shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars, or imprisonment for a period not exceeding one year, at the discretion of the court.

1407. No **marriage solemnized** before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any **want of jurisdiction** or authority in such supposed justice or minister; *Provided*, The marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

1408. It shall be lawful for every **religious** society to join together in marriage such persons as are of the said society, according to the **rites** and customs of such society to which they belong; the clerk or keeper of the minutes, proceedings, or other book of the religious society wherein such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the probate judge of the county a certificate of the marriage, and the same shall be recorded in like manner as is provided in the preceding section of this chapter.

1409. The original **certificate** and record of marriage made by the minister, officer, or person, as prescribed in this chapter, and the record thereof, made as prescribed, or a copy of such record, duly certified by such officer, shall be **received in** all courts and places as presumptive **evidence** of the fact of such marriage.

May be proved by an eye witness of ceremony. **17**, 529 (23 N. W., 507).

1410. All **marriages** contracted **without this state**, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state.

Private marriage in Illinois held not invalid in that state and hence binding in Nebraska. **24**, 429 (39 N. W., 450).

Secs. 1411 to 1416. "An act respecting the rights of **married women.**" 1871, p. 68. In force June 1.

1411. The property, real and personal, which any woman in this state may own at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and any real, personal, or mixed property, which shall come to her by descent, devise, or the gift of any person except her husband, *or which she shall acquire by purchase or otherwise,* shall remain her sole and **separate property,** notwithstanding her marriage, and shall not be subject to the disposal of her husband, or liable for his debts; **Provided,* That all property of a married woman not exempt by law from sale on execution or attachment shall be liable for the payment of all debts contracted for necessaries furnished the family of said married woman after execution against the husband for such indebtedness has been returned unsatisfied for want of goods and chattels, lands and tenements whereon to levy and make the same.

Words "or bequest" after devise omitted and * to * added 1875, p. 88; and all after last * added 1887, p. 478. Wife's separate property not liable for husband's debts, although he had reduced it to his possession so it would be liable under the common law. **12,** 389 (11 N. W., 852). Since the act of 1875 there is no law subjecting the separate property of a married woman to execution or sale for any debt of her husband whatever. **14,** 264 (15 N. W., 336). Female marrying under sixteen years can convey her real estate after arriving at that age. **19,** 431 (27 N. W., 393). Wife may become creditor of husband. **4,** 170. In contest between creditors, presumption against wife. **8,** 329. Exempt property cannot be taken for necessaries. **25,** 658 (41 N. W., 642). No presumption of law that personalty in possession of wife while living with her husband belongs to latter. **29,** 428 (45 N. W., 471). See **5,** 246; **17,** 348 (22 N. W., 776); **24,** 760 (40 N. W., 282); **28,** 373 (44 N. W., 450); **28,** 807 (44 N. W., 1136).

1412. A married woman, while the marriage relations subsists, may **bargain,** sell, and convey her real and personal property, and enter into any **contract** with reference to the same in the same manner, to the same extent, and with like effect as as a married man may in relation to his real and personal property.

Common law rule adopted. **6,** 264. Wife bound by her contracts regarding her separate estate. **6,** 363. Married woman may make the same disposition of her individual property as may a married man. **4,** 315. A married woman is liable upon her contract of warranty for her property. **17,** 667 (24 N. W., 333). Married woman may bind her separate property to secure her husband's debts. **12,** 468 (12 N. W., 1). Mortgage given by a married woman to secure her husband's note made three months before, there being no new consideration, cannot be enforced. **11,** 448 (9 N. W., 569). Married woman is not liable on note signed by her unless it was given with reference to and upon the faith and credit of her separate property. **10,** 311 (4 N. W., 1054). Where husband transacts business for his wife and she ratifies his acts, she is bound. **6,** 377. Making and delivering of a promissory note by husband to wife for a valuable consideration, a valid contract. **9,** 22 (2 N. W., 221). *Bona fide* contract between husband and wife will not be declared fraudulent, from the mere fact that years afterward the husband was unable to pay his debts. **11,** 249 (9 N. W., 90). Wife not liable for medical services for family. **8,** 359. See **23,** 420 (36 N. W., 572).

1413. A woman may, while married, **sue** and **be sued,** in the same manner as if she were unmarried.

Wife may maintain suit against her husband on promissory note. **9,** 25 (2 N. W., 221). Wife may maintain an action for an injury to her person. **7,** 486.

1414. Any married woman may **carry on** trade or **business,** and perform any labor or services on her sole and separate account; and the earnings of any married woman, from her trade, business, labor, or services, shall be her sole and separate property, and may be used and invested by her in her own name.

To enable a married woman to avoid payment of note executed by her as security for another it is not sufficient to allege that the notes are not a charge on her separate estate; she must allege that the contract did not concern her separate property, trade, or business. **20,** 457 (30 N. W., 526).

1415. Any **woman** who shall have been **married out of** this **state** shall, if her husband afterwards become a resident of this state, enjoy all the **rights** as to property which she may have acquired by the laws of any other state, territory, or country, or which she may have acquired by virtue of any marriage contract or settlement made out of this state.

1416. Nothing in this act contained shall invalidate any **marriage settlement** or contract now made, or to be made hereafter.

Sec. 1417. "An act to exempt the property of the husband from liability of the debts contracted by the wife before marriage." 1877, p. 33. In force June 1.

1417. The property of the husband shall not be liable for any **debts** contracted by the wife **before marriage.**

Secs. 1418 to 1460, except secs. 1440 and 1441, formed ch. 16, R. S. 1866, p. 128, entitled "Divorce and Alimony."

1418. **Marriages** which are declared **void** by section three of chapter 40, entitled "Marriages," are void without any decree of divorce.

1419. In case of a marriage solemnized when either of the **parties** are **under** the **age** of legal consent, if they shall separate during such nonage, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable.

1420. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned or referred to in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a **petition** in the district court of the county where the parties, or one of them, reside, **for annulling** the same, and such petition shall be filed, and proceedings shall be had thereon, as in the case of a petition filed in said court for a divorce; and upon due proof thereof, it shall be declared void by a decree or sentence of nullity.

1421. When the validity of any marriage shall be denied or doubted by either of the parties, the other may file a **petition** in the manner aforesaid, **for affirming** the marriage, and upon due proof of the validity thereof it shall be declared valid by a decree or sentence of the court, and such decree, unless reversed on appeal, shall be conclusive upon all parties concerned.

Woman competent to testify against her alleged husband; her testimony corroborated by letters, etc., held sufficient in case stated to prove marriage when opposed to unsupported denial of husband. **24,** 424, 434 (39 N. W., 450).

1422. A **divorce** from the bonds of matrimony may be decreed by the district court of the county where the parties, or one of them, reside, on the application by the petition of the aggrieved party in either of the following cases: *First*—When adultery has been committed by any husband or wife. *Second*—When one of the parties was physically incompetent at the time of the marriage. *Third*—When one of the parties has been sentenced to imprisonment in any prison, jail, or house of correction, for three years or more; and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights. *Fourth*—Where either party shall willfully abandon the other without just cause, for the term of two years. *Fifth*—When the husband or wife shall have become an habitual drunkard. **Sixth*—When either party shall be sentenced to imprisonment for life; and no pardon shall effect a decree of divorce for that cause rendered.

*Amended and *sixth* clause added 1875, p. 79. Action may be brought in county where plaintiff resides and summons issued to and served upon defendant in another county. **10,** 349 (6 N. W., 397). General denial, good answer to allegation of adultery. **6,** 306. See **20,** 536; **28,** 275; **29,** 533 (45 N. W., 777).

1423. A **divorce** from the bonds of matrimony or **from bed** and **board** may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by other means; or for utter desertion of either party for the term of two years; and a like divorce may be decreed, on complaint of the wife, when the husband, being of sufficient ability to provide suitable maintenance for her, shall grossly or wantonly, and cruelly refuse or neglect so to do.

Mere rudeness of language, austerity of temper, etc., not sufficient. **16,** 15 (19 N. W., 784). Husband must *grossly* or *wantonly* refuse or neglect to support the wife to entitle her to a divorce. **10,** 145 (4 N. W., 1036).

1424. No divorce shall be granted unless the **complainant** shall have **resided in** this **state** for six months immediately preceding the time of filing the complaint, or unless the marriage was solemnized in this state, and the applicant shall have resided therein from the time of the marriage to the time of filing the complaint.

At least one of the parties must be *bona fide* resident of place where divorce is granted. **19,** 706 (28 N. W., 296).

1425. **No divorce** shall be decreed in any case when it shall appear that the petition therefor was founded in or exhibited **by collusion** between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

Courts of general jurisdiction can vacate decree after term at which rendered, if obtained by fraud. **24**, 551 (39 N. W., 594).

1426. A **petition** or bill of divorce, alimony, and maintenance may be exhibited **by** a **wife** in her own name, as well as a husband; and in all cases the respondent may **answer** such petition or bill **without oath**; *and in all cases of divorce, alimony, and maintenance, when personal service cannot be had, service by **publication** may be made as is provided by law in other civil cases under the Code of Civil Procedure.

Amended and all after * added 1869, p. 28. Affidavit for service by publication defective, court acquires no jurisdiction. **8,** 200 (2 N. W., 466). See **21,** 390 (32 N. W., 170).

1427. That either party may be a witness as in other civil cases.

This section added 1869, p. 28.

1428. **Suits** to annul or affirm a marriage, or for a divorce, shall be **conducted** in the same manner as other suits in courts of equity; and the court shall have the power to award issues, to decree costs, and enforce its decrees as in other cases.

1429. In every suit brought, either for a divorce or for a separation, the court may, in its discretion, require the **husband** to **pay** any sum necessary to enable the **wife to** carry on or **defend** the suit during its pendency; and it may decree **costs** against either party, and award execution for the same; or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

See **29,** 459 (45 N. W., 466).

1430. After the exhibition of the petition in a suit to annul a marriage, or for a divorce, whether from the bonds of matrimony or from bed and board, the **court** may at any time, either in term or vacation, on the petition of the wife, **prohibit** the husband from imposing any **restraint** upon her personal liberty during the pendency of the cause.

1431. The court may in like manner, on the application of either party, make such order concerning the care and **custody of** the minor **children** of the parties, and their suitable maintenance, during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

Custody of children taken from grandparents, with whom erring wife lived, and awarded to husband. **29,** 459 (45 N. W., 466).

1432. Upon pronouncing a sentence or decree of nullity of a marriage, and also upon decreeing a divorce, whether from the bonds of matrimony or from bed and board, the court may make such further **decree** as it shall deem just and proper concerning the care, **custody**, and maintenance of the minor **children** of the parties, and may determine with which of the parents the children or any of them shall remain.

1433. The court **may** from time to time, afterwards, on the petition of either of the parents, **revise** and alter such **decree** concerning the care, custody, and maintenance of the children, or any of them, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children shall require.

1434. Whenever nullity of a marriage or a **divorce from** the bonds of matrimony for any cause* shall be decreed, or when the husband shall be sentenced to imprisonment for life, and also upon every divorce from bed and board, the wife shall be entitled to the immediate **possession of** all her **real estate** in like manner as if her husband were dead.

*Exception in case of adultery of wife omitted 1887, p. 391.

1435. Upon every such dissolution of a marriage, as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further **decree** for **restoring** to the **wife** the whole, or such part as it shall deem just and reasonable, of the **personal estate** that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

1436. Upon every divorce for adultery committed by the husband, and upon every divorce from bed and board for any cause, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a **trustee** or trustees, to be appointed by the court, upon trust, to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct.

1437. Such **trustees** shall also pay over the principal sum to the wife and children of the marriage, when ordered by the court, in such proportions and at such times as the court shall direct, regard being had in the disposition of said income, as well as of the principal sum, to the situation and circumstances of the wife and children; and the said trustees shall give such **bonds** as the court shall require for the faithful performance of their trust.

1438. Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, in pursuance to the foregoing provisions, such court may require the **husband** to **disclose, on oath,** what personal estate has come to him, by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

1439. Upon every divorce from the bonds of matrimony for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board, from any cause, if the estate and effects restored or awarded to the wife shall be insufficient for the suitable support and maintenance of herself and such children of the marriage as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband and such **alimony** out of his estate as it shall deem just and reasonable, having regard to the ability of the husband, the character and situation of the parties, and all other circumstances of the case.

Wife entitled to alimony in every case except adultery. Alimony may be granted after the divorce. **26**, 322 (42 N. W., 9). Court may decree alimony in a suit therefor, independent of divorce. **27**, 283 (43 N. W., 118). An order for alimony and suit money cannot be taken to supreme court before final judgment on the application for divorce. **18**, 463 (25 N. W., 623). A ruling on a motion to retax costs is reviewable. **18,** 509 (26 N. W., 245). See **12,** 212 (10 N. W., 713); **28,** 646 (44 N. W., 996).

Secs. 1440 and 1441. "An act to provide additional remedies for enforcement and collection of judgments and orders for alimony or maintenance." 1883, p. 224. In force June 1.

1440. All **judgments** and orders **for** payment of **alimony** or of maintenance in actions of divorce or maintenance shall be **liens** upon property in like manner as in other actions, and may in the same manner be enforced and collected by execution and proceedings in aid thereof, or other action or process as other judgments.

A non-resident wife can have no claim for alimony against land transferred by her husband during her lifetime. **18,** 476 (25 N. W., 724). This remedy to enforce judgment for alimony is exclusive; failure to pay is not a contempt. **23,** 308 (36 N. W., 536).

1441. The **remedy** given by this act shall be held to be **cumulative** and in no respect to take away or abridge any subsisting remedy or power of the court for the enforcement of such judgments and orders; *Provided,* Nothing in this act shall affect the title of any *bona fide* purchaser for value holding by reason of such *bona fide* purchase at the date of its passage.

1442. When the marriage shall be dissolved by the husband being sentenced to imprisonment for life, and when a divorce shall be decreed for the cause of adultery committed by the husband, or **misconduct** or drunkenness **of the husband,** or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her **dower** in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

Wife entitled to dower where divorced on ground of misconduct of husband, but decree for permanent alimony bars dower. **18,** 396 (25 N. W., 571).

1443. When a divorce shall be decreed for the cause of **adultery** committed **by** the **wife,** the husband may hold such of her **personal estate** as the court shall deem just and reasonable under all the circumstances in the case, and the same shall be determined and decreed by the court at the time of the granting of such divorce.

Amended 1887, p. 392.

1444. In all cases where **alimony** or other allowance shall be decreed for the wife or for the children, the court may require sufficient **security** to be given by the husband for the payment thereof, according to the terms of the decree. And upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, his real or personal estate may be sold as upon execution for the payment of any sums due upon such decree. And in default of security for the payment of installments in future to fall due, the court may also appoint a receiver to take charge of his real or personal estate, or both, and hold the same, and the rents, issues, interests, and profits thereof, for security for the payment of installments in future falling due. *And judgments and decrees for alimony or maintenance shall be liens upon the property of the husband, and may be enforced and collected in the same manner as other judgments of the court wherein they are rendered.

Amended and all after * added 1883, p. 225. See **12,** 212 (10 N. W., 713).

1445. After a **decree** for alimony or other allowance for the wife and children, or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony or allowance, or the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of the said matters which such court might have made in the original suit.

Notice of filing of petition to set aside former decree for alimony cannot be served on former attorney in the case—a new summons is required. 13, 96 (13 N. W., 29).

1446. A divorce for the cause of adultery committed by the wife shall not affect the **legitimacy of** the **issue of** the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the case; and in every case the legitimacy of all children begotten before the commencement of the suit shall be presumed until the contrary be shown.

1447. Upon the **dissolution of** a **marriage** on account of the nonage, insanity, or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the **legitimate issue** of the parent who, at the time of the marriage, was capable of contracting.

1448. When a marriage is dissolved on account of a **prior marriage** of either, and it shall appear that the second marriage was contracted in good faith and with the full belief of the parties that the former wife or husband was dead, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent who, at the time of the marriage, was capable of contracting.

1449. Upon the dissolution by decree or sentence of nullity of any marriage that is prohibited on account of **consanguinity** between the parties, or of any marriage between a white person and a negro, the issue of the marriage shall be deemed to be illegitimate.

1450. If any persons, after being **divorced** from the bonds of matrimony, for any cause whatever, shall **cohabit** together, they shall be liable for all the penalties provided by law against adultery.

1451. A petition to annul a marriage on the ground that one of the parties was under the age of legal consent may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such **marriage** be **annulled** on the application of a party who was of the age of legal consent at the time of the marriage, nor when it shall appear that the parties, after they had obtained the age of consent, had freely cohabited as man and wife.

1452. A petition to annul a marriage on the ground of **insanity** or **idiocy** may be exhibited by any person admitted by the court to prosecute as the next friend to such idiot or lunatic.

1453. The **marriage of** a **lunatic** may also be declared void upon the application of the lunatic after the restoration of reason, but in such case no sentence of nullity shall be pronounced if it shall appear that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind.

1454. If there shall be any issue of a marriage, annulled on the ground of **force or fraud,** the court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

1455. A suit to annul the marriage on the ground of the **physical incapacity** of one of the parties shall only be maintained by the injured party against the party whose incapacity is alleged, and shall, in all cases, be brought within two years from the solemnization of the marriage.

1456. **No decree** of divorce and of the nullity of a marriage shall be made solely **on** the declarations, **confessions,** or admissions of the parties, but the court shall in all cases require other satisfactory evidence of the facts alleged in the petition for that purpose.

1457. In any suit brought for a divorce on the ground of **adultery**, although the fact of adultery be established, the **court** may **deny** a **divorce** in the following cases: *First*—When the offense shall appear to have been committed by the procurement or with the connivance of the complainant. *Second*—When the offense charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense. *Third*—When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

1458. In case of an application for a divorce from bed and board, although a decree for such divorce be not made, the court may make such **order** or decree **for** the support and **maintenance** of the wife and children, or any of them, by the husband, or out of his property, as the nature of the case may render suitable and proper.

1459. When a **decree** of divorce from bed and board forever, or for a limited time, shall have been pronounced, it may be **revoked** at any time thereafter, under such regulations and restrictions as the court may impose, upon the joint application of the parties, and their producing satisfactory evidence of their reconciliation.

1460. If any **married woman**, at the time of exhibiting a petition against her husband, under the provisions of either of the last two sections, shall reside in this state, she shall be deemed an **inhabitant** thereof, although her husband may reside elsewhere.

Secs. 1461 and 1462. "An act relating to the **custody of children** in certain cases." 1867 (Ter.), p. 18. In force February 16.

1461. When, from any cause, a husband and wife shall separate, and the wife shall claim possession of any child or children who may be the fruit of such marriage, not exceeding twelve years of age, said wife shall apply to the **probate judge** of the county wherein said husband and wife resided at the time of their separation, or in which the mother may reside at the time of said application for the custody of said child or children, the probate judge shall give said husband notice of the **application**, together with the time set for hearing the cause, which time shall not be less than three days from the service of the notice, and the notice may be served by leaving a copy at the usual place of residence of the husband.

1462. If it shall appear that said **mother** is **able to provide** for the **maintenance** of such child or children, and should, under the proof presented be awarded the custody of such child or children, the probate judge shall order that such child or children shall remain in the **custody** of the mother until the custody of such children shall be otherwise ordered by the district court; *Provided*, That such order shall never be made when it shall appear by the proof [that] the wife is the offending party.

Secs. 1463 and 1464. "An act to prevent the marriage of divorced persons during the time allowed for proceedings to reverse the decree of divorce and during the pendency of such proceedings and to fix the time within which such proceedings may be commenced." 1885, p. 248. In force June 5.

1463. It shall be **unlawful** for any person who shall obtain a decree of divorce **to marry** again **during** the **time** allowed by law for commencing proceedings in error or by appeal **for** the **reversal** of such decree, and in case such proceedings shall be instituted, it shall be unlawful for the defendant in error or appellee to marry again during the pendency of such proceedings, and a violation of this act shall subject the party violating it to all the penalties of other cases of bigamy.

It is not the policy of the law to enlarge this restriction. 18, 400 (25 N. W., 571).

1464. **No proceedings** for reversing, vacating, or modifying any decree of divorce, except in so far as such proceedings shall affect only questions of alimony, property rights, custody of children, and other matters not affecting the marital relations of the parties, shall be **commenced** unless within six months after the rendition of such decree, or in case the person entitled to such proceedings is an infant, a person of unsound mind, within six months, exclusive of the time of such disability.

Secs. 1465 to 1504 originally formed ch. 23, R. S. 1866, p. 178, entitled "Guardians and Wards."

1465. All male children under twenty-one and all females under eighteen years of age are declared to be **minors**; but in case a female marries between the ages of sixteen and eighteen, her minority ends.

Insolvent parent may emancipate sons and give them their earnings. 23, 420 (36 N. W., 572). See **21,** 683 (33 N. W., 424).

1466. The court of probate in each county, when it shall appear to him necessary or convenient, may appoint **guardians** to minors and others being inhabitants or residents in the same county, and also to such as shall reside without the state, and have an estate within the same.

1467. If the minor is under the age of fourteen years, the court of probate may appoint his **guardian,** and if he is above the age of fourteen years he may nominate his own guardian, who, if approved by the court, shall be **appointed** accordingly.

1468. If the **guardian nominated by** such **minor** shall not be approved by the court, or if the minor shall reside out of the state, or if, after being cited by the court, he shall neglect to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

1469. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the court, his **nomination** of a guardian may be **certified** to the court of probate by a justice of the peace, which shall have the same effect as if made in the presence of the court.

1470. The father and mother are the **natural guardians** of their minor children, and are equally entitled to their custody, and to care for their education, being themselves competent to transact their own business, and not otherwise unsuitable. If either dies, or is disqualified for acting, the guardianship devolves upon the other.

Amended 1885, p. 261.

1471. If the **minor** have **no father or mother** living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward.

1472. Every **guardian** appointed as aforesaid shall have the care and management of the estate of the minor, and shall **continue** in office until such minor shall arrive at the age of twenty-one if a male, or eighteen years if a female, or until the guardian shall be discharged according to law.

1473. Every such guardian shall give **bond,** with surety or sureties, to the judge of probate, in such sum as the court shall order, with **condition** as follows: *First*—To make a true inventory of all the real and personal estate of the ward that shall come to his possession or knowledge, and to return the same into the court at such time as the law directs. *Second*—To dispose of and manage all such estate and effects according to law, and for the best interests of the ward, and faithfully to discharge his trust as such guardian. *Third*—To render an account on oath of the property in his hands, including the proceeds of all the real estate which may be sold by him, and of the management and disposition of such property within one year after his appointment, and at such other times as the court shall direct. *Fourth*—At the expiration of his trust, to settle his accounts with the court, or with the ward, or his legal representatives, and to pay over and deliver all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Action upon guardian's bond accrues to ward when amount in hands of guardian is ascertained by county court on final settlement of guardian's account, not before. **21,** 538 (32 N. W., 578).

1474. If any **minor**, who has a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than such father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the **expenses** of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable, and shall be directed by the court, and the charges therefor may be allowed accordingly in the settlement of the accounts of such guardian.

1475. The surviving parent may by last will, in writing, appoint a guardian, being competent to transact their own business, and not otherwise unsuitable, for any of the children, whether born at the time of making the will or afterwards, and every such **testamentary guardian** shall have the same powers and shall perform the same duties with regard to the person and estate of the ward as a guardian appointed by the court.

Amended 1885, p. 261.

1476. Every such testamentary guardian shall give **bond** in like manner and with like condition as is hereinbefore required of a guardian appointed by the court; *Provided*, That when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless, from a change in the situation or circumstances of the guardian, or for other sufficient cause, the court shall think proper to require it.

1477. **[Guardian ad litem.]**—Nothing contained in this chapter shall impair or affect the power of any court to appoint guardians to defend the interests of minors, impleaded in such court, or interested in any matter then pending, nor their power to appoint or allow any person, as next friend for a minor, to commence, prosecute, or defend any suit in his behalf.

It is the duty of the general guardian to defend for his ward, but this does not prevent an appointment by the court. **15,** 297 (18 N. W., 57).

1478. When the relations or friends of any insane person, or of any person who, by reason of extreme old age, or other cause, is mentally **incompetent** to have the charge and management of his property, shall apply to the court of probate to have a **guardian** appointed **for** him, the court shall cause a notice to be given to the supposed **insane or incompetent** person of the time and place of hearing the cause, not less than fourteen days before the time so appointed.

1479. If, after a full hearing and examination, upon any such application, it shall appear to the court that the person in question is incapable of taking care of him or herself and managing his or her property, he shall appoint a **guardian** of his or her person and estate, with the powers and duties hereinafter specified; **Provided*, That when a person has been declared insane by the commission of insanity, and no one applies to have a guardian **appointed** for such person for thirty days thereafter, it shall be the duty of the clerk of the district court to make application to the county court of such county to appoint a guardian for such persons.

Amended and all after * added 1889, p. 577. An insane person may be sued without the appointment of a guardian *ad litem*. **15,** 297 (18 N. W., 57).

1480. Every **guardian** so appointed, as provided in the preceding section, shall have the care and custody of the person of his ward, and the **management** of all his estate, until such guardian shall be legally discharged, and he shall give **bond** to the judge of probate, in like manner and with the like condition as is before prescribed with respect to the guardian of the minor.

1481. When any person, by excessive drinking, or by gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or family to danger of want or suffering, or the county to charge or expense for the support of himself or family, any officer having charge of the poor of the county, or justice of the peace of the county of which such **spendthrift** is an inhabitant, or in which he resides, may present a complaint to the court of probate, setting forth the facts and circumstances in the case, and praying to have a guardian appointed for him.

1482. The court shall cause **notice** to be given to such supposed spendthrift of the time and place of hearing the case, not less than ten days before the time so appointed, and if, after a full **hearing,** it shall appear to the court that the person complained of comes within the provision contained in the preceding section, he shall **appoint** a **guardian** of his person and estate, with the powers and duties hereinafter specified.

1483. After the order for notice has been issued, the complainant may cause a copy of the complaint, with the order for such notice, to be filed in the office of the county clerk of the county, and a minute thereof be entered on the lien book in said office; and if a guardian shall be appointed on such application, all **contracts,** except for necessaries at reasonable prices, and all gifts, sales, and transfers of real or personal estate, made **by** such **spendthrift,** after the filing of a copy of such complaint and order, as aforesaid, and before the termination of the guardianship, shall be utterly void.

1484. When a guardian shall be appointed for an insane person, or a spendthrift, the court shall make an **allowance to** be paid by the guardian for all reasonable expenses incurred by the **ward,** in defending himself against the complaint.

1485. Every **guardian** appointed for a spendthrift shall have the care and custody of the person of the ward and the **management** of all his estate until the guardian shall be legally discharged, and he shall give **bond** to the judge of probate in like manner and with like condition as is hereinbefore directed with respect to the guardian of an insane person.

1486. Every **guardian** appointed under the provisions of this chapter, whether for a minor or for any other person, shall **pay** all just **debts** due from the ward out of his personal estate and the income of his real estate, if sufficient; or if not, then out of his real estate, upon obtaining license for the sale thereof, and disposing of the same in the manner provided by law.

1487. Every such **guardian** shall also **settle** all **accounts** of the ward, and demand, sue for, and receive all debts due him, or may, with the approbation of the court, compound for the same, and give a discharge to the debtor on receiving a fair and just dividend of his estate and effects, and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

1488. Every **guardian** shall **manage** the **estate** of his ward frugally and without waste, and apply the income and profit thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any, and if such income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor, as provided by law, and shall apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

1489. The guardian may join in and assent to a **partition** of the real estate of the ward, in the cases and in the manner provided by law, and he may also assign and set out dower in the said estate to any widow entitled thereto.

1490. Every **guardian** appointed by virtue of this chapter shall, before entering upon his duties, take and subscribe an **oath** or affirmation before the probate judge that he will faithfully perform the duties of guardian to such ward, according to law and the best of his ability. Every such guardian shall, within three months after his appointment, make out and return under oath, into the probate court from which he received his appointment, a true and perfect **inventory** of all the property of his ward in this state which shall come to his knowledge or possession, and shall within that time cause the same to be appraised in like manner as is required with respect to the estate of a deceased person; and every guardian shall, except as otherwise provided in this chapter, **account** for and dispose of the estate of his ward in like manner as is directed with respect to executors and administrators, as near as may be; and similar proceedings may be had to obtain such account or punish such guardian for contempt in not rendering the same.

Amended 1873, G. S., p. 400.

1491. The courts of probate in their respective counties, on the application of a guardian, or of any person interested in the **estate of** any **ward**, after such notice to all persons interested therein as the court shall direct, may authorize or require the guardian to sell and transfer any stock in public funds, or in any bank or corporation, or any other personal estate or effects held by him as guardian, and to invest the proceeds of such **sale**, and also any other moneys in his hands in real estate, or in any other manner that shall be most for the interest of all concerned therein, and the said court may make such further orders and give such directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

1492. When any **guardian**, appointed either by the testator or court of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the court, after notice to such guardian and all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust when it shall appear to the court proper to allow the same; and upon every such **resignation** or **removal**, and upon the death of any guardian, the court may appoint another in his place.

1493. If any **guardian**, having the care and custody of such minor, shall **neglect** to well feed and clothe him or her, or in any way maltreat or abuse him or her, he shall, upon conviction thereof, be fined not exceeding one hundred dollars, or imprisonment in the county jail not exceeding sixty days, or both, at the discretion of the court.

1494. **Proceedings** may be commenced by any one **against** such person who shall have such minor in charge, by filing an information under oath with the probate judge in the county where the **guardian** was appointed; and such judge shall, if any of the particulars mentioned in the preceding section appear to be proved by such information, issue his warrant requiring such guardian forthwith to be arrested and brought before him to answer such charge.

Amended 1873, G. S., p. 401.

1495. Before being brought before the judge upon such warrant, the party arrested shall have a reasonable opportunity of making a **defense**, and the plea of "not guilty" made by him, or entered by the court in case he refused to plead, shall be the only plea necessary.* If, upon the testimony adduced, it appears to the probate judge that the guardian is unfit for the trust, and that the condition of such minor would be ameliorated by the **removal** of such guardian, the judge shall remove him and appoint another in his place.

Amended, and all before * added 1873, G. S., p. 401.

1496. No **action** shall be maintained against the sureties in any bond given by the guardian unless it be **commenced** within four years from the time when the guardian shall have been discharged; *Provided*, That if at the time of such discharge the person entitled to bring such action shall be out of the state, or under any legal disability to sue, the action may be commenced at any time within five years after the return of such person to the state, or before such disability shall be removed.

1497. Upon complaint made to the court by any guardian or by the ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person, as having concealed, embezzled, or conveyed away any of the money, goods, or effects, or any instrument in writing belonging to the ward, the court may cite and examine such suspected person, and proceed with him, as to such charge, in the same manner as is provided with respect to **persons suspected of** concealing or **embezzling** the effects of a deceased testator or intestate.

1498. When any **minor** or other person liable to be put under guardianship according to the provisions of this chapter shall reside **without this state,** and shall have any real estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the court of probate of any county in which there may be any estate of such absent person; and after notice given to all persons interested, in such manner as the court shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

1499. Every **guardian** appointed according to the provisions of the preceding section shall have the same powers, and perform the same duties, with respect to any estate of the ward, that shall be found within this state, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed by virtue of this chapter.

1500. Every such guardian shall give **bond** to the judge of probate, in like manner and with like condition as is hereinbefore prescribed with respect to other guardians, excepting that the provisions respecting the **inventory,** the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects as shall come to his hands in this state.

1501. The **guardianship** which shall be **first** lawfully **granted** to any person residing without the state shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

1502. Every **guardian** shall be allowed the amount of his reasonable expenses, incurred in the execution of his trust, and shall also have such **compensation** for his services as the court in which his accounts are settled shall deem to be just and reasonable.

1503. When an account is rendered by two or more **joint guardians,** the court may in its discretion allow the same, upon the oath of any one of them.

1504. The word "**spendthrift**" in all its provisions relating to guardians and wards, contained in this or in any other statute, is intended to include every person who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness, or debauchery.

SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

Secs. 1505 to 1529 formed secs. 42 to 66, ch. 14, R. S. 1866, entitled "Decedents."

1505. When the **income** of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall **not** be **sufficient** to maintain the ward and his family, or to educate the ward when a minor, or the children of such insane person or spendthrift, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein as provided in this chapter.

1506. When it shall satisfactorily appear to the court, upon the petition of any such guardian, that it would be for the benefit of his ward that his **real estate**, or any part thereof, should be **sold**, and the proceeds thereof put out at interest or invested in some productive stock, his guardian may sell the same for that purpose, upon obtaining a **license** therefor, and proceeding therein as hereinafter provided.

1507. If the estate is sold for the purpose mentioned in the forty-second section of this chapter [1505], the guardian shall **apply** the **proceeds** of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, for the education of the ward when a minor, or the children of such insane person or spendthrift, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

1508. If the estate is sold for the purpose of putting out or investing the **proceeds** as provided in the forty-third section of this chapter [1506], the guardian shall make the **investment** according to his best judgment, or in pursuance of any order that may be made by the district court.

1509. In every case of the sale of real estate, as provided in this subdivision, the **residue of** the **proceeds**, if any, remaining upon the final settlement of the account of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions as the real estate would have been if it had not been sold.

1510. In order to obtain a **license for** such **sale**, the guardian shall present to the district court of the county in which he was appointed guardian a **petition** therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale, which petition shall be verified by the oath of the petitioner.
Changed from probate court 1867, p. 111. **13**, 290; **20**, 602.

1511. If it shall appear to the court from such petition that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, the court shall thereupon make an **order** directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, **to show cause** why a license should not be granted for the sale of such estate.

1512. A **copy** of such order shall be **personally served** on the next of kin of such ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or shall be published at least three successive weeks in such newspaper circulating in the county as the court shall specify in the order.

1513. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the **commissioners** of the county in which the ward is an inhabitant shall certify in writing their **approbation** of the proposed **sale.**

1514. The **judge** of the district court, at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service of the order, and upon filing the certificate of approbation of the commissioners of the county when necessary, shall **hear** and examine the proofs and allegations of the petitioner, and of the next of kin, and of all other persons interested in the estate, who shall think proper to oppose the **application.**

Changed from probate court 1867, p. 112.

1515. On such hearing the guardian may be examined on oath and **witnesses** may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the judge of the district court in the same manner and with the like effect as in other cases.

Changed from probate court 1867, p. 112.

1516. If, after a full examination, it shall appear to the court either that it is necessary or that it would be for the benefit of the ward that the real estate, or any part of it, should be sold, such court may grant a **license** therefor, **specifying** therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be put out or invested as aforesaid.

Judge can grant license at chambers. 13, 290 (13 N. W., 399.)

1517. Every **guardian** licensed to sell real estate, as aforesaid, shall, before the sale, give **bond** to the judge of the district court with sufficient surety or sureties, to be approved by such judge, with condition to sell the same in the manner prescribed by law for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

1518. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an **oath,** in substance like that required in the succeeding subdivision,* to be taken by an executor, administrator, or guardian, when licensed to sell real estate pursuant to the provisions of that subdivision.

1519. He shall also give public notice of the time and place of **sale,** and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian, and the evidence of the giving of such **notice** may be perpetuated in like manner and with the same effect as is provided in case of sale of real estate by guardians.

1520. The **license** granted in pursuance of this subdivision shall be **in force** no more than one year after granting the same.

1521. When any minor, insane person, or spendthrift, residing without this state, shall be put under guardinship in the territory or country in which he resides, and shall have no guardian appointed in this state, the **foreign guardian** may file an authenticated copy of his appointment in the district court in any county in which there may be any real estate of the ward.

1522. After filing such authenticated copy of his appointment, such **foreign guardian** may be **licensed** by the district court of the same county to sell the real estate of the ward in this state, in the same manner and upon the same terms and conditions as are prescribed in this subdivision in the case of a guardian appointed in this state, excepting in the particulars hereinafter mentioned.

1523. Every **foreign guardian** so licensed to sell real estate shall take and subscribe the oath required in the like case of guardians appointed in this state, and shall give notice of the time and place of sale, and **conduct** the same in the manner prescribed for guardians appointed here, and may perpetuate the evidence of notice in the same manner.

1524. Upon every such sale by a foreign guardian, the **proceeds** of the sale,

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*See sec. 1115, *ante.*

or as much thereof as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been according to the laws of this state if it had not been sold; and such foreign guardians shall, in every case, before making the sale, give **bond**, with satisfactory surety or sureties, to the judge of the district court, with conditions to account for and dispose of the same accordingly.

1525. If any person shall appear and object to the granting of any license prayed for under the provisions of this subdivision, and it shall appear to the court that either the petition or the **objection** thereto is unreasonable, said court may, in its discretion, award **costs** to the party prevailing, and enforce the payment thereof.

1526. No **action** for the recovery of any estate sold by a guardian, under the provisions of this subdivision, shall be maintained by the ward, or by any person claiming under him, unless it shall be **commenced** within five years next after the termination of the guardianship, excepting only that persons out of the state, and minors and others under legal disablility to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the state.

1527. In case of an action relating to any estate sold by a guardian, under the provisions of this subdivision, in which the ward or any person claiming under him shall contest the validity of the **sale**, the same shall **not** be **avoided** on account of any **irregularity** in the proceedings; *Provided*, It shall appear: *First*—That the guardian was licensed to make the sale by a district court of competent jurisdiction. *Second*—That he gave a bond which was approved by the judge of the district court, in case any bond was required by the court upon granting the license. *Third*—That he took the oath prescribed in this subdivision. *Fourth*—That he gave notice of the time and place of sale, as prescribed by law. *Fifth*—That the premises were sold accordingly, at public auction, and are held by one who purchased in good faith.

1528. If, in relation to such sale, there should be any neglect or **misconduct** in the proceedings **of** the **guardian,** by which any person interested in the estate shall suffer damage, such aggrieved party may recover such **damage** in a suit on the bond of such guardian, or otherwise, as the case may require.

1529. If the validity of any sale made by a guardian under the provisions of this subdivision shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the **sale** shall **not** be held **void** on account of any **irregularity** in the proceedings, provided it shall appear that the guardian was licensed to make the sale by the proper district court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Secs. 1538 to 1580 formed secs. 105 to 113, ch. 14, R. S. 1866.

1530. When the goods, chattels, rights, and credits in the hands of the **guardian** of any minor, or of any idiot or insane person, or of any person under guardianship on account of excessive drinking, gaming, idleness, or debauchery, shall be insufficient to pay all the just debts of his ward, with the charges of managing his estate, the guardian may be **licensed** by the district court of the county in which such guardian was appointed, to sell his real estate for that purpose, in like manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a sale by an executor or administrator, except as to the particulars in which a different provision is hereinafter made.

1531. If it shall be represented to the court that it is necessary to sell some part of the real **estate of** the **ward**, and by such partial sale the residue of the real estate or some specific piece or part thereof would be greatly injured, the court may license the **sale of** the whole of the estate, or of such part thereof as the court shall judge necessary, and most for the interest of all concerned.

1532. The **guardian** shall give **bond** to the judge of the district court, to account for the surplus of the proceeds of the sale in like manner as is prescribed in this subdivision in the case of a like sale by an executor or administrator.

1533. No license shall be granted to any guardian to sell real estate of his ward, as provided in this subdivision, in any case excepting that of minors, unless the **commissioners** of the county of which the ward is an inhabitant, or in which he resides, shall certify to the judge of the district court, in writing, their **approbation** of such proposed sale, and that they deem it necessary.

1534. All those who are next of kin and heirs apparent or presumptive of the ward shall be considered as interested in the estate, and may appear and answer to the petition of the guardian, and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as **persons interested** according to the provisions respecting similar sales by executors and administrators, contained in this subdivision.

1535. When any minor, insane person, or spendthrift, residing out of this state, shall be put under guardianship in the state or country in which he resides, and shall have no guardian appointed in this state, the **foreign guardian** may **file** an authenticated copy of his **appointment** in the district court of any county in which there may be any real estate of the ward.

1536. After filing an authenticated copy of his appointment, such foreign guardian may be **licensed to sell** the real estate for the payment of the debts of the ward, and the charges of managing his estate, in the same manner and upon the same terms and conditions as are prescribed in this subdivision, in the case of a guardian appointed in this state, excepting in the particulars wherein a different provision is hereinafter made.

1537. When it shall appear to the judge of the district court that the **foreign guardian** is **bound**, with sufficient surety or sureties in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the district court, **no further bond** shall be required here; otherwise he shall give bond in like manner as is prescribed in this subdivision, in case of sales by foreign executors or administrators.*

1538. When such foreign guardian is authorized to sell **more than** is **necessary** to pay the debts and charges, he shall, before making the **sale**, give **bond** with sufficient surety or sureties to the judge of the district court, with condition to account, before such judge, for all the proceeds of the sale that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

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* See sec. 1171, *ante*.

CHAPTER 14.—DRAINAGE.

Secs. 1539 to 1566. "An act to provide for **draining marsh** or swamp **lands** in the state of Nebraska, and to repeal an act entitled 'An act to drain marsh or swamp lands,'" passed March 3, 1873. Took effect June 1, 1873. 1881, p. 236. In force June 1.

1539. The **board** of commissioners of any county may, at any regular or special session, **cause to be located** and constructed, straightened, widened, altered, or deepened, any **ditch**, drain, or water-course, as hereinafter provided, when the same is necessary to drain any lots, lands, public or corporate road, or railroad, and will be conducive to the public health, convenience, or welfare.

See **22,** 445 (35 N. W., 211).

1540. **The word "ditch,"** as used in the act, shall be held to **include** a drain or water-course. The petition for any such improvement shall be held to include any side lateral spur or branch ditch, drain, or water-course necessary to secure the object of the improvement, whether the same is mentioned therein or not; but no improvement shall be located unless a sufficient outlet is provided.

1541. When the proposed **improvement** will drain the whole, or any part of any public or corporate road, or railroad, or will so benefit any such road that the traveled track or road bed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state or county road, or to the corporation, if a corporate road or railroad, a proper share of the **costs** and expenses thereof, as hereinafter provided.

1542. A **petition for** any such improvement shall be made to the board of commissioners of the county, signed by one or more owners of lots or lands which will be benefited thereby, which said petition shall be filed with the county clerk, and shall set forth the necessity of the proposed improvement, and describe the route and termini thereof with reasonable certainty, and shall be accompanied by a good and sufficient **bond** signed by two or more sureties, to be approved by the county clerk, conditioned for the payment of all costs that may occur in case said board of county commissioners find against such improvement.

1543. The county clerk shall deliver a copy of said petition to the board of county **commissioners,** at their next meeting, who shall thereupon take to their assistance a competent surveyor or engineer, if in their opinion his services are necessary, and at once proceed to **view the line** of the proposed improvement, and determine by actual view of the premises along and in the vicinity thereof, whether the improvement is necessary, or will be conducive to the public health, convenience, or welfare, and whether the line described is the best route, and they shall **report** their finding in writing, and order the clerk to enter the same on their journal.

1544. If the commissioners, upon actual view, find that the **route** proposed is not such as to best effect the object sought, they shall change the same and **establish** the route and determine the dimensions of the proposed improvements; *Provided*, Any change so made shall not in any case exceed one hundred and sixty rods from the route described in the petition.

1545. If the board of commissioners find for the improvement they shall cause to be entered on their journal an order directing the county surveyor, or an **engineer,** to go upon the line described in said petition, or as changed by them in accordance with section six, and **survey** and level the same and set a stake at every hundred feet, numbering down stream; note the intersection of section lines, road crossings, boundary lines, precinct, and county lines and make a **report,** profile, and plat of the same, and estimate the number of cubic yards for each working section as hereinafter provided.

1546. The commissioners shall also by their order direct the surveyor or engineer to make and return a **schedule of all** lots, **lands**, public or corporate roads, or railroads that will be **benefited** by the proposed improvement, whether the same are abutting upon the line of the proposed improvement or not, and an apportionment of a number of lineal feet and cubic yards to each lot, tract of land, road, or railroad, according to the benefits which will result to each from the improvement, and an **estimate of** the **cost** of location and construction **to each**, and a specification of the manner in which the improvement shall be made and completed.

1547. The **plat** provided for in section seven shall be drawn upon a **scale** sufficiently large to represent all the meanderings of the proposed improvement, and shall show the boundary lines of each lot, or tract of land, and of each road or railroad to be benefited thereby, the name of the owner of each lot or tract of land as it then appears on the tax duplicate, the authority or company having in charge or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, and such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade line, and the gradient fixed, and the surveyor or engineer shall file his report with the county clerk within thirty days after making the survey and level.

1548. Upon the filing of the report of a surveyor or engineer, the county **clerk** shall, without delay, **fix** a **day for** the **hearing** of the same, which shall not be more than forty days from the time of the filing of said report, and shall prepare a **notice** in writing, directed to the resident lot or land owners, and to the authorities or municipal or private corporations affected by the improvement, setting forth the pendency, substance, and prayer of said petition, together with a tabular statement of the apportionment as made by the surveyor or engineer in his report, and shall deliver the same to the sheriff, who shall serve a copy of the same upon each resident lot or land owner, and each member of such public board or authority, and upon an officer or agent of such private corporation at least ten days before the time fixed for said hearing; *Provided*, Said copies need contain only so much of the original notice as affects the interests of the person so served; and the county clerk shall in like manner notify each non-resident lot or land owner, or by publication in a newspaper printed and of general circulation in the county, for at least three consecutive weeks before the day set for the hearing, which said notice shall be verified in the manner now provided by law for the verification of notices by publication.

1549. The county **commissioners** shall **meet** at the office of the county clerk on the day fixed **for the hearing**, and shall first determine whether the requisite notice has been given. If they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them, and order the notices to be served as hereinbefore provided, and when they find that due notice has been given, they shall examine the report of the surveyor or engineer, and the apportionment made by him, and if it is in all respects fair and just, according to benefits, they shall approve and confirm the same; but if they find said apportionment to be unfair or unjust, they shall so order and so amend it as to make it fair and just according to benefits.

1550. At any time before the day set for hearing, after persons are notified as provided in section eleven, any person or corporation whose **lands** are **taken** or affected in any way by the improvement may make application to the commissioners in writing for compensation and **damages**, and a failure to make such application shall be held as a waiver of all right thereto.

1551. The **commissioners** on actual view of the premises shall **fix** and allow such compensation for land appropriated, and assess such **damages** as will in their judgment accrue from the construction of the improvement to each person or corporation making application as provided in section twelve, and without such application to each idiot, insane person, or minor owning lands taken or affected by such improvement.

1552. A person or corporation party to the proceedings may file **exceptions to** the apportionment, or to any claim for compensation or damages at any time before the time set for the final hearing of the **report** and apportionment. The commissioners may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witnesses by subpœna, which the county clerk shall issue on demand, and their decisions on the exceptions shall be entered on their journal, and if they sustain the exceptions, the cost of the hearing thereon shall be paid out of the county treasury, and if they overrule the same, such costs shall be paid by the person or corporation filing the same.

1553. Any person or corporation feeling aggrieved thereby may **appeal** to the district court within and for the proper county from any final order or judgment of the commissioners made in the proceedings and entered upon their journal determining either of the following matters, to-wit: *First*—Whether said ditch will be conducive to the public health, convenience, or welfare. *Second*—Whether the route thereof is practicable. *Third*—The compensation for land appropriated. *Fourth*—The damage claimed to property affected by the improvement, which appeal may be taken and prosecuted in the manner provided by law for appeals from the decision of the county board on claims against the county.

1554. **No appeal** taken in pursuance of the provisions of section fifteen shall in any manner **affect** the **progress** of the construction of the proposed improvement; *Provided*, The petitioners shall enter into a good and sufficient bond to be approved by the said district court as [or] by the judge thereof at chambers, and filed with the clerk of said court, conditioned for the payment of all damages and costs that the appellant may sustain on the trial of said appeal.

1555. The **clerk** of the district court, immediately after the close of the term at which the appeal is tried, as provided for in the preceding section, shall **certify** to the board of county commissioners a full and complete transcript of the proceedings had upon such appeal in said district court, and the commissioners shall make such entry on their journals as may be necessary to give effect to the **judgment** of the district court.

1556. Immediately after the transcript mentioned in the preceding section is returned to the county clerk, or immediately upon the filing of the bond mentioned in section sixteen, or in case there is no appeal as hereinbefore provided, then immediately after the hearing of the report mentioned in section eleven, the commissioners shall proceed to advertise for sealed **bids for** the **construction** of said ditch in working sections not less in extent than the number of lineal feet apportioned to each lot or tract of land, public or corporate road, or railroad, and shall fix a time when said bids will be opened, giving not less than twenty days, notice thereof, and they shall attend at the time and place of opening the bids, and shall let the contract or contracts to the lowest responsible bidder, and shall take good and sufficient security for the faithful performance of such contract or contracts, and they shall fix the time for the completion of each contract, not exceeding in any case one hundred and fifty days from the time of entering into the same, and no bid shall be entertained which exceeds the estimated cost of construction of the working section or sections upon which the bid is made.

1557. The work shall be done under the **supervision** of the surveyor or engineer appointed by the commissioners, and when a part, not less than one-fourth of the portion included in any contract, is completed according to the specifications, he shall give the contractor a certificate thereof, showing the proportional amount which the contractor is entitled to be paid according to the terms of the contract, and the county clerk shall, upon presentation of such certificate, draw his warrant upon the treasurer for seventy-five per cent of said amount, and the treasurer will pay the same out of any funds in the treasury applicable to such purposes; *Provided*, That no proportional amounts shall be certified or paid unless the whole of such contract exceeds two thousand lineal feet.

1558. Any **contract** not completed within the time specified, shall be re-estimated and **relet** to the lowest responsible bidder, but not for a sum greater than the estimate, nor a second time to the same party; *Provided*, The board of commissioners may, for a good cause, extend the time of any contractor not to exceed *two years.

*Former act read "one;" amended 1885, p. 373.

1559. When the working sections are let, as hereinbefore provided, and the **cost** and expenses of location and construction, and all compensation and damages are ascertained, the commissioners shall meet and determine at what time and in what number of **assessments** they will require the same to be paid, and order that the assessments as made by them be placed on the duplicate tax list against the lots and lands so assessed.

1560. Where the commissioners make an **assessment** they shall cause an entry to be made directing the clerk to make and furnish to the treasurer a special duplicate, with the assessment arranged thereon, as required by their order. The clerk shall retain a copy thereof in his office, and all assessments shall be **collected** and accounted for by the treasurer; and in case such assessments, or any part thereof, are not paid by the party or parties owning or controlling the lots or lands against which such assessments are made in the manner contemplated by this act, such assessments shall be and remain a perpetual **lien** against the premises so assessed; and the county treasurer shall proceed to advertise and sell said lots and lands, or such portions thereof as shall be necessary to pay said assessments, together with the costs, in the same manner as real estate is now by law advertised and sold by him for the payment of delinquent taxes; *Provided*, That the commissioners may extend the time of payment (without interest) of said assessments, to correspond with any extension of time that may be granted to any contractor under the provisions of section one of this act, and in case said assessments are not paid when due, they shall draw ten per cent interest until paid; *And provided further*, That the provisions of this act shall apply to all contracts entered into and assessments made, under the provisions of [the act hereby amended] as well as to such contracts and assessments hereafter to be made.

Amended 1885, p. 373.

1561. Any **officer** mentioned in the act who shall **neglect** or refuse to perform any duty imposed upon him by the provisions of this act, shall forfeit and pay a **fine** of twenty-five dollars for every such offense, to be recovered before any court of competent jurisdiction in the name of the state of Nebraska, for the benefit of the common school fund of the county, at the suit of any person aggrieved thereby.

1562. When a **ditch** is proposed which will require a location **in more than one county,** application shall be made to the board of commissioners of each county so affected, and the surveyor or engineer shall make a report for each county.

Application for damages shall be made, and appeals from the finding of the commissioners in joint session locating and establishing such ditch, and from the assessment of damages or compensation shall be taken to the district court in the county in which the lots or lands which are immediately affected are located. A majority of the commissioners of each county, when in joint session, shall be competent to locate and establish such ditch.

1563. The commissioners, shall, if necessary, at their June session levy a **tax**, not exceeding one mill on the dollar of the assessed valuation of the county, sufficient to pay for the location and construction of such portions of the respective ditches located by them or by the commissioners of two or more counties as may be apportioned to the county, and the removal of any obstructions that may accumulate in any portion of any ditch. When any improvement shall have been completed under the provisions of this act, it shall be and remain under the direct control and supervision of the county commissioners or board of supervisors, and at any time the same in their opinion require repairing or the removal of obstructions in any part thereof, they shall cause the same to be done, and shall pay for the same out of the county ditch fund; *Provided*, That nothing in this act shall be construed to apply to any irrigating ditches in this state.

Amended 1891, p. 360.

1564. The board of county commissioners of any county in this state are hereby authorized, whenever they deem it necessary, to create a **county ditch fund**, to consist of taxes collected on county levies, and all balances remaining unexpended of special ditch funds arising from excess of assessments made on ditch improvements after the expenses thereof have been fully paid; and the commissioners are hereby authorized, whenever necessary, to borrow from the county general fund for the benefit of the above named ditch fund, and all moneys so borrowed shall be, as soon as practicable, returned to the county general fund.

1565. **Whoever** willfully **obstructs** any **ditch** shall **forfeit** to the county in which such ditch is located the sum of twenty-five dollars, to be recovered before any court having competent jurisdiction in the name of the state, and shall moreover be liable in damages to the party injured.

1566. The **collection** of assessments to be levied to pay for the location or construction of any ditch shall **not** be **enjoined** nor declared void; nor shall said assessment be set aside in consequence of any error or irregularity committed or appearing in any of the proceedings provided by this act, and no injunction shall be allowed restraining the collection of any assessment until the party complaining shall first pay to the county treasurer the amount of his assessment, which amount so paid may be recovered from the county in an action brought for that purpose in case such injunction is made perpetual.

Secs. 1567 to 1581. "An act to authorize the construction of levees, dikes, and drains, and for the reclaimation of wet and overflowed lands by incorporated companies." 1877, p. 160. In force June 1.

1567. That any number of **persons**, not less than three, being owners of lands wet or liable to be overflowed, may **organize a company for** the purpose of draining, reclaiming, and protecting such lands which shall have power to straighten, widen, deepen, and make new channels for the whole or any part of any river, or water-course, and to construct any dikes, drains, levees, and breakwaters, and do everything which they shall deem proper to accomplish the purpose for which the company shall have been organized.

Drains or levees for the reclamation of wet or overflowed lands can be constructed across the lands of others, and the costs assessed thereon, except by consent, only in cases where the *public* welfare will be subserved. **12,** 163 (10 N. W., 547).

1568. Such persons shall sign **articles** of association, specifying the name and purposes of the company, and shall elect from their number not less than three nor more than seven **directors,** of the time and place of which election the members shall be notified by notices signed by three members, and posted in three public places near the work five days before the election, but notice may be waived by the members. Vacancies in the offices of directors may be filled by the appointments made by the remaining members.

1569. Said **articles** of association shall be **recorded** in the county clerk's office of the several counties in which any part of the work shall be situated, and from the date of filing the same for record in either of such counties such company shall be a body corporate, with all powers incident to such bodies and to consummate the purposes for which it was organized; and to buy, receive donations of, and hold, and sell and convey any lands benefited or to be benefited by the proposed work of the company; and any person owning land supposed to be liable to be affected by said work may become a member of the company by signing the articles of association. The corporate existence of the company shall be judicially recognized, and the company's records shall be *prima facie* evidence of its acts.

1570. An **annual election** shall be held by the company at such time and place as the company shall appoint for the election of directors, of which twenty day's notice shall be given by one week's publication in one newspaper of general circulation in each county in which any part of the work shall be situated, if such paper shall be printed and published in such county, and if there be none, then by posting notices in three public places near the work.

1571. A majority of the directors shall form a **quorum,** and shall have control and management of the business and affairs of the company. They shall appoint one of their number president, and shall appoint a secretary, treasurer, and such other **officers** and agents as they may see fit; and all officers and agents shall be entitled to fair compensation for their services. The treasurer shall give bond to the company with proper penalties and sureties, for the faithful discharge of his duties, and the safe keeping and prompt payment, according to the orders of the board of directors, of all moneys that may come into his hands. The president, directors, secretary, and treasurer shall hold their respective offices for one year, and until their successors shall be elected and qualified, and shall be sworn to the faithful discharge of their duties. The secretary may administer all official oaths.

1572. The company may apply to the district court or county court, in term time, or to a judge thereof in vacation, of any county in which any part of the proposed work shall be situated, which court or judge, as the case may be, shall immediately appoint three disinterested **appraisers,** and such appraisers shall examine all lands, the intrinsic or market value of which may be by them supposed to be liable to be affected by the construction of the proposed work, or by the appropriation of all or any part of it for right of way or other purpose of the company, or of any stone, timber, gravel, or other material required by the company, and shall make out separate schedules in the smallest United States government subdivisions of all such lands situated in each county, and shall assess to each tract the full and entire amount of such benefit which it will, in the opinion of a majority of them, receive, without any regard to the cost of such work, and the injury which, in the opinion of a majority of them, it will sustain; and append to each schedule their affidavit that the same is a true assessment, and return the same to the secretary of the company, who shall cause it to be filed for record and recorded in the office of the county clerk of the county in which the land therein described shall be situated, and from the date of filing thereof such assessments shall respectively be a lien on the lands upon which they were assessed, for the amount of such assessments of benefits, less the amount of injury assessed. And when, and as often as it shall become necessary or desirable to re-assess any tract of land for the correction of any mistake, or to enable the company to appropriate any part of the same for right of way, or any stone, timber, gravel, or other material for the construction of the work; and whenever, and as often as it shall be desired by the company to make a re-assessment of any tract or tracts of land for any purpose, said appraisers shall, upon request of the company, make such **re-assessments**, and so, from time to time, when, and as often as they shall be requested, and shall make and return schedules of the same, and such schedules shall be filed for record and recorded in the county clerk's office as aforesaid, and shall constitute liens, shall be collected, and shall in all respects be governed by the same rules, and have the same force and effect as the original assessments above provided for; and if any appraiser appointed as aforesaid shall die, resign, or fail to act as such, when the interest of the company shall, in the opinion of the president, require it, his appointment as such appraiser shall thereby be vacated, and upon representation of such vacation to such court or judge by the president, such court or judge shall, upon the application of the company, immediately fill such vacancy by the appointment of a like disinterested person, who shall qualify by and in the manner above provided, and the same shall be done when and as often as the company may request; *Provided*, That upon filing such schedule for record, the secretary shall give notice thereof by posting a notice in a conspicuous place in the county clerk's office, and any party aggrieved by any such assessment may, within thirty days thereafter, appeal therefrom to the district court or county court of said county; *And provided further*, That any person who is under legal disabilities at the time of the making and filing of such schedule, shall have the right of appeal as aforesaid at any time within thirty days after the removal of such disabilities; *And provided further*, That any two appraisers may perform all the services required by this section, and that all acts concurred in by any two shall be valid, binding, and effectual.

1573. Before the actual construction of the work shall be begun, surveys of it and **estimates** of its costs shall be made, and the appraisers' schedules of assessments returned to the secretary, and if the estimated cost of the work shall exceed the aggregate amounts of the assessments, the work shall not be further prosecuted.

1574. Before the actual construction of the work shall be begun, the company shall divide the main line of their work into as many **sections**, of not exceeding six miles in length, as may be convenient, and each of such sections, with its auxiliaries, branches, and tributaries, shall form a separate division of the work; and they shall also appropriate and set apart as applicable to, and hold the same inviolate for, the construction of each of such divisions respectively, a portion of their resources bearing the same ratio to the whole of their resources properly applicable to the construction of the work as the estimated cost of such division shall bear to the estimated cost of the whole work; and so much thereof as shall be necessary shall be applied for the purpose for which it was appropriated and set apart, and the surplus may be applied to other legitimate purposes of the company, and the work of construction shall be prosecuted as simultaneously upon the whole line as may seem to the directors consistent with proper economy.

1575. The **owners of land shall have notice** of the time and place when and where the appraisers will begin the examination of lands and the assessments of benefits and injuries thereto, and of the order in which it shall be intended to proceed with the same, which notice need not specify what lands are to be examined or assessed, but may be general, and addressed to the public, and shall be sufficient if published for three successive weeks in a newspaper published in the county in which the lands are situated, and proof of its publication may be made by affidavit of the printer or publisher of the paper in which it is published, or of the secretary of the company.

1576. The board of directors may order the **payment of** said **assessments** in installments not exceeding ten per centum per month, and payment thereof shall be made to the treasurer in compliance with such order; *Provided*, That no more shall be collected than shall, in the opinion of the directors, be required for the legitimate purposes of the company in the prosecution of the work; *And provided further*, That unless the main line of the company's proposed work shall exceed twenty miles in length, no part of the assessments shall be collected by the company until the company shall have given bond, payable to the state of Nebraska, with surety approved by the clerk of the district court, or judge thereof, of a county in which the work, or some part of it, is situated, conditioned for the faithful application to the legitimate purposes of the company of all money which shall be received by them for the construction of the work, which bond shall be filed in the clerk's office of the district court in the county where it was approved, and a copy thereof in the clerk's office of such court in each of the other counties in which any part of the work is situated; and any person or persons aggrieved by any breach of the conditions of said bond shall have an action thereon in any court of competent jurisdiction for the recovery of all damages thereby sustained by him or them.

1577. **Payment** of assessments of benefits may be **enforced** by foreclosure of the lien in any court of competent jurisdiction, in the same manner as is provided by law for the foreclosure of mortgages, and the sale of mortgaged premises for the collection of debts, and payment of damages assessed for injuries to lands may be enforced by an action in a like court.

1578. The **company may appropriate** any **land**, stone, timber, gravel, or other **materials** necessary for the right of way, or the construction, maintenance, or improvement of their proposed work, by first paying into the county treasury of the county where the land is situated, for the use of the owner of the land, the amount of damages assessed by said appraisers to him therefor.

1579. Any **company** where work shall be estimated to cost three thousand dollars or more, may **issue** their **bonds**, with or without coupons, not exceeding in the aggregate the estimated cost of their work, which bonds may each be of any denomination, and payable at any time and place, and bear any rate of interest, not exceeding ten per centum, payable annually or semi-annually, and may secure the payment thereof by pledge or pledges, or mortgage or mortgages, upon said assessments for benefits to lands or any part thereof, or any other property of the company, which pledges and mortgages may each provide for a sinking fund for the gradual extinguishment of the debts; and such company may, from time to time, negotiate said bonds in any market or place, at any rate of discount not exceeding ten per centum; and after any such bonds shall have been negotiated, no action or proceeding shall be instituted, nor any defense to any action be interposed, by the company or any other person or persons, the object or tendency of which shall be to impair the validity or security, or to depress the value of such bonds, any provisions of law to the contrary notwithstanding.

1580. **After** the expiration of **three years** from the recording of the appraisers' schedule of assessments in any county, **no action** shall be instituted **to foreclose** any lien on land situated in said county, unless the assessments secured by such lien shall have been pledged or mortgaged as security for one or more bonds then outstanding; and in such cases no tract of land shall, after the lapse of said three years, be liable for more than its fair proportion of the assessments pledged or mortgaged as security for bonds of the company, and required for the extinguishment thereof.

1581. **No informality**, irregularity, or omission, which shall have occurred, or which may occur, in the organization or proceedings of any company, or in the appointment or proceedings of any of them, officers, agents, or the appraisers, shall affect the rights or privileges of any such company, or **invalidate** the assessment of the appraisers, nor any sale of land which shall be made under any foreclosure of any lien for the assessment thereon; *Provided*, The amount of the assessment shall be clearly set forth in the appraisers' schedule, and the schedule shall have been duly recorded, and notice of the recording thereof given as hereinbefore provided.

CHAPTER 15.—ELECTIONS.

Secs. 1582 to 1693, except sec. 1628. "An act to provide a **general election law**, the procedure relative to contested elections, and the filling of vacancies in office." 1879, p. 240. In force September 1.

1582. The general election of this state shall be **held** on Tuesday succeeding the first Monday in November of each year.

1583. All state, district, county, precinct, and township **officers**, by the constitution and laws made elective by the people, except school district officers, and municipal officers in cities and villages, shall be **elected** at a general election to be held at the time provided in the preceding section.

1584. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, **who** shall have resided in the state six months, in the county forty days, and in the precinct, township, or ward ten days, shall be **an elector**: *First*—Citizens of the United States. *Second*—Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization at least thirty days prior to an election.

Winnebago Indians held not to be entitled to vote. 28, 466 (44 N. W., 471). See 14, 574 (16 N. W., 905).

1585. **No person** shall be **qualified** to vote **who** is *non compos mentis*, or who has been convicted of treason or felony under the law of the state, or of the United States, unless restored to civil rights.

1586. **No soldier**, seaman, **or marine** in the army and navy of the United States shall be deemed **a resident** of the state in consequence of being stationed therein.

1587. **Electors** shall in all cases, except treason, felony, or breach of the peace, be **privileged** from arrest during their attendance at elections, and going to and returning from the same, and no elector shall be obliged to do military duty on the days of election, except in time of war and public danger.

1588. **[Officers chosen.]**—One (1) judge of the supreme court and two (2) regents of the university shall be elected in the year eighteen hundred and seventy-nine (1879), and every second year thereafter, who shall serve for the term of six (6) years. Judges of the district court shall be elected in the year eighteen hundred and seventy-nine (1879), and every four years thereafter. The governor, lieutenant governor, congressmen, state treasurer, auditor of public accounts, secretary of state, attorney general, commissioner of public lands and buildings, superintendent of public instruction, and members of the legislature shall be elected in the year eighteen hundred and eighty (1880), and every second year thereafter. In counties not under township organization one (1) county judge, one (1) sheriff, one (1) coroner, one (1) county treasurer, one (1) county clerk, one (1) county surveyor, one (1) county superintendent of public instruction shall be elected in the year eighteen hundred and seventy-nine (1879), and every second year thereafter; and in each precinct two (2) justices of the peace and two (2) constables shall be elected in the year eighteen hundred and seventy-nine (1879), and every second year thereafter, except as hereinafter provided; and three (3) judges of election and two (2) clerks of election, one (1) assessor, and one (1) overseer of highways for each road district shall be elected in the year eighteen hundred and seventy-nine (1879), and annually thereafter, and one (1) county commissioner shall be elected annually, who shall serve three (3) years. In counties under township organization, one (1) county judge, one (1) sheriff, one (1) coroner, one (1) county treasurer, one (1) county clerk, one (1) county surveyor, and one (1) county superintendent of public instruction shall be elected at the first general election after the adoption of township organization, and every second year thereafter. At the first general election in each township after the adoption of township organization, one (1) town clerk, one (1) town treasurer, three (3) judges and two (2) clerks of election, one (1) assessor, and one (1) overseer of highways for each road district shall be elected annually thereafter; and two (2) justices of the peace and two (2) constables shall be elected at said election, and every second year thereafter, except as hereinafter provided; and at said election one (1) supervisor shall be elected in each township and thereafter each odd numbered year in the odd numbered township and each even numbered year in the even numbered townships, said townships to be numbered by the county board at their first regular meeting after the passage of this act or the subsequent adoption of township organization, as nearly as practicable in the same manner as government sections are numbered in a government township. And at the first general election after the adoption of the township organization in any county, in each city and each village having one thousand (1,000) inhabitants or over, one (1) supervisor at large and one (1) additional supervisor for each four thousand (4,000) inhabitants therein, one (1) assessor, three (3) judges and two (2) clerks of election, and annually thereafter; and in each city and in each village having more than five hundred (500) inhabitants, two (2) justices of the peace and two (2) constables shall be elected at said election, and every second year thereafter; *Provided, however*, That in all cities of the metropolitan class there shall be six (6) justices of the peace, and six (6) constables for each of said metropolitan cities, and no more; and in all cities of the first class having less than eighty thousand (80,000) and more than twenty-five thousand (25,000) inhabitants there shall be elected three (3) justices of the peace and three (3) constables for each of such cities, and no more. In each county having a population of eight thousand (8,000) inhabitants or more, there shall be elected in the year eighteen hundred and seventy-nine (1879), and every four (4) years thereafter, a clerk of the district court in and for such county, and in each county having a population less than eight thousand (8,000) inhabitants the county clerk shall be *ex-officio* clerk of the district court and perform the duties devolving upon the officer by law. All county, precinct, and township officers created by statute or that may be hereinafter created shall be elected at such general election as may be provided in the law creating the office or offices.

Amended 1885, p. 249; 1889, p. 361; 1891, p. 235. County clerk is *ex-officio* clerk of the district court in counties having a population of less than 8,000, and the election of a person as clerk of the district court in such a county does not entitle him to the office. **10,** 507 (6 N. W., 604). Does not have to give additional bond as clerk of district court. **1,** 202. Clerk district court can only be elected in 1871 and every four years thereafter in counties having 8,000 or more population, and cannot be elected in counties attaining that population in intervening years. **11,** 174 (8 N. W., 432). "First general election" means first election at which county officers are elected. **16,** 567 (20 N. W., 875). Cities of second class under township organization elect two justices for each ward. **28,** 748 (45 N. W., 169). Cities of first class entitled to three justices only. **28,** 628 (44 N. W., 874). Election of justices in cities of first class **20,** 379 (30 N. W., 267) If the requisite population is had thirty days before any general election, it is sufficient. **17,** 503 (23 N. W., 337). See **21,** 220 (31 N. W., 788).

1589. **Electors of president** and vice-president shall be elected at the general election in the year 1880, and every four years thereafter, on such day as congress may appoint, said electors to be chosen from the state at large.

1590. At the general election immediately preceding the expiration of the term of a United States **senator** from this state, the electors shall, by ballot, express their **preference for** some person for the office of United States senator. The votes to be canvassed and returned in the manner hereinafter provided.

1591. A county **treasurer** shall be **ineligible** to office for more than two consecutive terms.

This section has no retroactive effect. 13, 533 (14 N. W., 481).

1592. Thirty days previous to any **election** at which any state officer is to be elected, the governor shall issue his **proclamation** designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative, or judicial district, and transmit a copy thereof by mail to the county clerk of each county.

1593. At least twenty days previous to any **election,** the county clerk, in counties not under township organization, shall make out and deliver to the sheriff of his county, or in counties under township organization, to the several town clerks, and to city clerks in cities of the first and second class, three **notices** thereof for each precinct, township, or ward in which the election in such county is to be held. The notices shall be substantially as follows: Notice is hereby given, that on Tuesday, the ——— day of November, ———, next, at the house of ———, in ———, an election will be held for governor, etc. (naming all the state and other officers to be balloted for), which election will be open at eight o'clock in the morning, and will continue open until six o'clock in the afternoon of the same day. Dated this ——— day of ———, A. D. 18—. A. B., County Clerk.

1594. The said sheriff or town or city clerk to whom the notices are delivered shall **post up** in three of the most public places in each precinct, township, or ward the three **notices** therefor, at least ten days before the time of holding any election.

1595. At all elections the **polls** shall be **opened** at eight o'clock in the morning, and close at six o'clock in the afternoon of the same day; but if the judges and clerks shall not attend at the hour of eight o'clock in the morning, or if it shall be necessary for the electors present to appoint judges and clerks, or any of them, as hereinafter prescribed, the polls may, in that case, be opened at any time before the time for closing the same shall arrive, as the case may require.

1596. Previous to any vote being taken the **judges** and clerks of election shall severally take an **oath** or affirmation according to the form prescribed in chapter on official bonds.

1597. In case there shall be no judge or justice of the peace present at the opening of the polls, it shall be lawful for the judges of election to **administer** the **oath** or affirmation **to each other** and the clerks of election; and the person administering such oath or affirmation shall cause an entry thereof to be made and subscribed by him, and prefix to each poll book.

1598. [**Vacancies.**]—In the event of any person or persons elected, or that have been appointed as herein provided for, shall not attend at the time and place of holding such election, the electors present shall choose the requisite number of persons to fill the respective offices of clerks and judges of election, and the person or persons thus chosen shall qualify as provided in the last two preceding sections.

1599. Upon **opening** the polls, one of the judges of election shall make **proclamation** of the same, and at least thirty minutes before the closing of the polls proclamation shall be made in like manner that the polls will be closed in half an hour.

1600. Before any ballot shall be deposted in the **ballot-box,** the ballot-box shall be publicly opened and exhibited, and the judges and clerks shall see that no ballot is in such box; after which the box shall be **locked** and the key delivered to one of the judges, and shall not be again opened until the close of the polls; and the ballot-box shall not be removed from the view of the electors present until the polls are closed and all the votes shall have been counted and canvassed; nor shall two of the judges be absent from the room or building in which the election is held, at the same time, during such voting and canvassing.

1601. The county clerk, previous to the opening of the polls, shall prepare duplicate **poll books**, in the manner and **form** following:

Poll books of an election, held in ——— precinct, ——— township, or ——— ward, in ——— county, on the —— day of ———, A. D. ——, at which time, A. B., C. D., and E. F. were judges, and G. H. and I. K. were clerks of said election—the following named persons voted thereat:

NUMBERS AND NAMES OF ELECTORS.

No. 1. A. B.	No. 3. E. F.
No. 2. C. D.	No. 4. G. H.

We do hereby certify that the above is a true list of the persons voting at the named election. G. H., I. K., *Clerks.*

ATTEST: A. B., C. D., E. F., *Judges of Election.*

TALLY LIST OF PERSONS VOTED FOR, AND FOR WHAT OFFICE, CONTAINING THE NUMBER OF VOTES FOR EACH CANDIDATE.

GOVERNOR.	MEMBER OF CONGRESS.	COUNTY CLERK.

We hereby certify that A. B. had —— votes for governor, and C. D. had —— votes for governor; that E. F. had —— votes for member of congress, etc.

G. H., I. K., *Clerks.*

ATTEST: A. B., C. D., E. F., *Judges of Election.*

1602. The **ballots** shall designate the office for which the persons therein named are voted for.

See 5, 166.

1603. One of the **judges** of election shall **receive** each **ballot** from the person offering to vote, at the same time announcing the name of such person in a clear, distinct voice, and if his right to vote be not challenged, or in cities of the first and second class if the name of the person offering to vote is on the register list, his ticket shall be placed in the ballot-box without inspecting the names written or printed thereon, and the clerks of election shall enter the name of the voter and the number in each poll book when his ballot is received.

1604. The county board shall provide a sufficient number of **ballot-boxes**, with secure locks and keys, at the expense of the county, for the several precincts or districts; and each ballot-box at the close of each election shall be deposited with one of the judges of election, who shall take charge of the same, and be responsible for its safe keeping; and he shall convey said ballot-box, or cause it to be conveyed, to the place of holding elections in his precinct, township, or ward, at the next general or special election, and deliver, or cause the same to be delivered, to one of the judges of said election.

1605. Any **constable** of the precinct, township, or ward, who may be designated by the judges of election, is directed to attend at the place of election, and he is authorized and required to **preserve order** and peace at and about the same; and if no constable be in attendance, the judges of election may appoint one or more specially, by writing, who shall have all the powers of a regular constable.

1606. If any **person** conducts [himself] in a **noisy**, riotous, or tumultuous manner at or about the polls, so as disturb the election, or insults or abuses the judges or clerks of election, and persists in such conduct after being warned to desist, the constable shall forthwith **arrest** him without warrant, and bring him before the nearest justice of the peace, to be dealt with according to law, but such person shall be permitted to vote.

1607. The judges in cities of the first and second class where the registry law is in force shall designate one of their number to **check on** the **register** the name of every person voting; and no vote shall be received from any person whose name does not appear there, unless he shall furnish the judges his affidavit showing that he is a qualified elector, and a sufficient reason for not appearing before the registrar, and shall also prove by the affidavit of one elector whose name is on the register that such affiant knows him to be a resident of that city, giving his residence by street and number, as the same is in such case required to appear on the register. Said affidavit shall be kept by the judges, and by them filed in the office of the county clerk, and all such affidavits may be administered by either of the judges or clerks of election.

1608. Any person offering to vote, whether his name be on the register or not, may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to **challenge** any person offering to vote whom he knows or suspects not to be duly qualified.

1609. If any **person** offering to vote is **challenged** by one of the judges of the election, or by any elector, one of the judges shall tender to him the following **oath** or affirmation: "You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence, and qualifications as an elector at this election."

1610. If the person be challenged on the ground that he has not made his declaration of intention to become a citizen of the United States, the judges, or one of them, shall put the following question, provided that the person so challenged does not produce his intention papers: "Have you made your declaration of intention to become a citizen of the United States?" If the person be challenged on the ground that he has not resided in this state for six months immediately preceding the election, the judges, or any one of them, shall put the following **questions**: *First*—"Have you resided in this state for six months immediately preceding this election?" *Second*—"Have you been absent from this state within six months immediately preceding this election?" If he answers "Yes," then, *Third*—"When you left, did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?" *Fourth*—"Did you, while absent, look upon and regard this state as your home?" *Fifth*—"Did you, while absent, vote in any other state or territory?" If the person be challenged on the ground that he is not a resident of the county, precinct, township, or ward where he offers to vote, the judges, or one of them, shall put the following questions: *First*—"Have you resided in this county for forty days last past?" *Second*—"Have you resided in this precinct (or ward) for the last ten days?" *Third*—"When did you last come into this county?" *Fourth*—"When you came into this county, was it for temporary purposes merely, or for the purpose of making it your home?" *Fifth*—"Did you come into this county for the purpose of voting therein?" *Sixth*—"Are you now an actual resident of this precinct or ward?" If the person be challenged on the ground that he is not twenty-one years of age, the following question shall be put: "Are you twenty-one years of age, to the best of your knowledge and belief?" The judges of the election, or one of them, shall put all such other questions to the person challenged, under the respective provisions of section two of this chapter, as may be necessary to test his qualifications as an elector at that election.

1611. If any person shall **refuse to take** the **oath** or affirmation provided for in this chapter, his vote shall be rejected.

1612. If a person's vote be challenged, and such **challenge** be **not withdrawn** after he shall have answered the foregoing questions, or such of them as may be necessary, one of the judges shall tender to him the following **oath**: "You do solemnly swear (or affirm) that you are a citizen of the United States (or have declared your intention to become such); that you have been an inhabitant of the state of Nebraska for the last six months, and of the county of ——— for the last forty days, and of this precinct for the last ten days; that you have attained the age of twenty-one years, to the best of your knowledge and belief." And it shall be the duty of the clerks of election to write on the poll books, at the end of such person's name, "sworn."

1613. The judges of election, or in cities of the first and second class the registrars of voters, in determining the **residence** of a person offering to vote, shall be governed by the following rules, so far as the same may be applicable: *First*—That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning. *Second*—A person shall not be considered or held to have lost his residence who shall leave his home and go into another territory or state, or county of this state, for temporary purposes merely, with the intention of returning; *Provided*, That six months' consecutive residence in this state shall be necessary to establish a residence within the meaning of this chapter. *Third*—A person shall not be considered and held to have acquired a residence in any county of this state into which he shall have come for temporary purposes merely without the intention of making it his residence. *Fourth*—If a person remove to another territory or state, intending to make it his permanent residence, he shall be considered and held to have lost his residence in this state. *Fifth*—If a person remove to another state or territory, intending to remain there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may intend to return at some future period. *Sixth*—The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment only, or for transient purposes, it shall be otherwise. *Seventh*—If a married man have his family fixed in one place, and he does business in another, the former shall be considered and held to be the place of his residence. *Eighth*—The mere intention to acquire a new residence, without the fact of removal, shall avail nothing, nor shall the fact of removal, without intention. *Ninth*—If a person shall go into another territory or state, and while there shall exercise the right of citizen by voting, he shall be considered and held to have lost his residence in this state.

See **14,** 574 (16 N. W., 905).

1614. When the poll is closed the judges shall immediately proceed to **canvass** and ascertain the result of the election.

1615. The **canvass** shall be **public,** and shall commence by a comparison of the poll lists from the beginning, and a correction of any errors that may be found therein until they agree. The poll books shall then be signed by the judges and attested by the clerks, and the names therein contained shall be counted, and the number set down at the foot of the poll books.

1616. The **ballot-box** shall then be **opened,** and the ballots, without being unfolded, shall be counted by the judges. If the whole number of votes cast shall exceed the number of persons voting, as shown by the poll books, the said ballots shall then be replaced in the ballot-box, the box locked, and the ballots therein thoroughly shaken. The box shall then be opened, and one of the judges shall draw from the box as many ballots as there shall have been cast exceeding the number as shown by the poll books, and the number so withdrawn shall, without unfolding, be placed in a separate envelope, sealed, marked "**excessive ballots**," and sent with other returns of election to the county clerk in the manner hereinafter provided.

1617. After the poll **books** have been examined, compared, and **signed**, and the excessive ballots, if any, shall have been withdrawn, sealed up, and endorsed, the ballots remaining in the box shall be taken out by one of the judges, and the **canvass** shall be **continued** by the judges announcing to the clerk the number of votes each candidate balloted for shall have received, after which the ballots shall be strung upon a strong thread.

1618. The clerks shall enter upon the **tally list** of the poll books, in columns under the names of persons voted for, all the votes as declared read by the judges.

1619. If two or more **ballots** are found so **folded together** as to convince the judges that they were cast as one, they shall not be counted, but they shall have the words "rejected as double" written upon them, be folded together again, and kept as herein directed.

1620. If, at any stage of the canvass, a **ballot not stating** for what **office** the person therein named is voted for is found in the box, when officers of different kinds are to be elected, it is to be rejected and disposed of as hereinafter directed.

1621. [**Excess of names.**]—Whenever a ballot shall contain a greater number of names for any one office than the number of persons required to fill that office, it shall be deemed fraudulent as to the whole of the names for that office, but no further; and shall be endorsed "Rejected as to office of ————," and disposed of as hereinafter directed; and no ballot shall be deemed fraudulent because it contains a less number of names than are authorized to be inserted.

Extrinsic evidence not admissible to contradict or explain such ballot. **29**, 345–7 (45 N. W., 632). But ballots containing names of three candidates for justices of the peace, each for a separate district, not void. **29**, 345 (45 N. W., 632).

1622. If at any stage of the canvass a ballot shall be found having correctly written or printed thereon the **surname** of any person for any office, who shall be a candidate for such office at said election, and there shall be no other candidate for the same office having the same surname, such ballot shall be counted for such candidate, although the **initial letter** or letters or first name or names written or printed before his surname may not be those properly belonging thereto; but if there shall be two or more candidates at said election for the same office having the same surname, and such initial letter or letters or first name or names, written or printed on said ballot, shall properly belong to neither of the candidates, such ballot shall be rejected and disposed of as hereinafter directed. A candidate within the meaning of this section is any person intentionally voted for at any election.

1623. [**Result—How expressed.**]—When all the votes shall have been examined and counted, the clerks shall set down in the form in their poll books the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number of votes he received, which number shall be expressed in words at full length.

10, 52 (4 N. W., 375).

1624. Upon the completion of the canvass, the judges of election shall **seal up** in a package all the **ballots** counted, together with ballots marked as rejected, and mark the same "ballots cast." They shall also enclose one of the **poll books** in an envelope or cover, and seal the same. The poll book thus sealed, the package marked "ballots cast," and "excessive ballots," if any there be, shall be securely bound together, and directed to the county clerk. The packages thus bound together shall be conveyed to the county clerk by one of the judges or clerks of election, within four days from the close of the polls. The clerk shall give a receipt stating that the poll books and ballots have been received and deposited with him.

1625. In counties not under township organization, the other **poll book** shall be **deposited** with one of the judges, to be appointed by the said judges to receive the same, and it shall be subject to the inspection of any elector who may wish to examine the same during the period of six months after such election shall have been held. In counties under township organization, in townships constituting a single precinct, the judges of election shall certify the result as to township officers immediately after footing up the result of the canvass on the poll books, and file such certificate, together with the other poll books, in the office of the town clerk; but where there are two or more election precincts in a township, the township board shall meet on the day after the election, and canvass the vote given for township officers as shown by the returns from the precincts, and the township board shall issue certificates of election accordingly.

1626. Where there is a **tie** between two persons for a township office, the clerk shall notify them to appear at his office at a given time to determine the same by lot before the board, and the certificate of election is to [be] given accordingly. If either party fail to appear, or to take part in the lot, the clerk shall draw for him.

1627. Upon the reception of the returns of each election precinct, township, or ward by the **county clerk**, directed to him as hereinbefore provided, and within six days after the closing of the polls, he, together with two disinterested electors of the county, to be chosen by himself, shall open the poll books and from the returns therein make **abstracts** of the **votes** cast, in the following manner: Of votes for governor, lieutenant governor, members of congress, secretary of state, auditor of public accounts, state treasurer, attorney general, state superintendent of public instruction, commissioner of public lands and buildings, and district attorneys on one sheet; of votes for presidential electors on another sheet; of votes expressing the choice of electors for United States senator on another sheet; of votes for judges of the supreme and district courts and regents of the university on another sheet; of votes for members of the legislature from the county alone on another sheet; of votes for members of the legislature by districts comprising more than one county on another sheet; and of votes for county, precinct, and township officers on another sheet. The foregoing abstracts shall be preserved by the county clerk in his office.

Amended 1889, p. 470. When canvassers refuse to do their duty, mandamus will lie to compel them to perform. **5**, 47. Board of canvassers have no judicial power whatever; their duty is to count the votes and declare the result. They cannot look beyond the returns. **10**, 53; **10**, 61 (4 N. W., 514); **11**, 106 (7 N. W., 743). Remedy by contest is not exclusive, and in many cases is not an adequate remedy. **11**, 107 (7 N. W., 743). Canvassing board cannot go behind the returns. **4**, 575.

Sec. 1628. "An act to provide for **canvassing votes** in certain cases." 1867 (Ter.), p. 18. In force June 1.

1628. Whenever the **county clerk** of any organized county of this state shall be **a candidate** for any office created by the laws of this state, or for member of the legislature of this state, it shall be the duty of the probate judge of the proper county to select two qualified electors of the county, who, together with himself, shall constitute a board of canvassers to **canvass** the vote polled for the office for which the then county clerk was a candidate; *Provided*, That in the event of the probate judge being a candidate for any office at said election, the county clerk shall canvass the votes as provided by law. The votes shall be so canvassed within the time and in the manner now prescribed by law.

1629. Upon the **completion of** the **canvass** the poll books shall be again sealed up, and together with the sealed packages of ballots, still unopened, securely bound in one package, shall be deposited in the office of the county clerk, where they shall be safely kept for twelve months, and the county clerk shall not allow the same to be inspected, unless in case of contested elections, or the same become necessary to be used in evidence in the courts, and then only by the person and in the manner provided by law.

1630. The county clerk shall make out a **certificate of election** to each of the persons having the highest number of votes for the several county, precinct, and * township officers, and members of the legislature from the county alone.

*"Townships" added 1889, p. 471.

1631. When there is a **tie** between two persons for an office to be filled by the county alone, or by any precinct therein, the clerk shall notify them to appear at his office at a given time to determine the same by lot before the canvassing board, and the certificate of election is to be given accordingly. If either party fail to appear, or take part in the lot, the county clerk shall draw for him.

In such case certificate should show manner of determining between the two. **23**, 716 (37 N. W., 617).

1632. When **two** or more **counties** are embraced **in one** senatorial or representative **district,** the clerks of the several counties in said district shall, within seven days after the election, transmit by mail or otherwise to the clerk of the county first named in the law designating the district a copy of the abstract of all the votes cast in the several counties composing such district, for senator or representative, and the clerk of the county first named in the law designating the district, on the reception of such abstracts shall select two disinterested electors, and the three shall compare the votes given in the several counties as shown by the abstracts returned, and the said clerk shall make out and deliver to the person having the highest number of votes for the senate or house of representatives a certificate of election, which shall be delivered to the proper person, or his agent when called for.

1633. The **votes** cast for governor, lieutenant governor, members of congress, secretary of state, auditor of public accounts, state treasurer, state superintendent of public instruction, attorney general, commissioner of public lands and buildings, and district attorneys, and votes cast expressing the choice of electors for United States senators, shall be **canvassed by** the **legislature** at its next regular session. A copy of the abstract of votes cast for such officers shall be sealed up by the county clerk immediately upon the completion of the canvass, endorsed "Abstract of votes cast for officers of the executive department, from ——— county, "or, "Abstract of votes cast expressing the choice of electors for United States senator, from ——— county," and addressed to "the speaker of the house of representatives."

1634. The county **clerk** shall at the same time envelope and seal up a **duplicate** copy of the same **abstracts** directed to the secretary of state, and all of the abstracts shall be placed in one envelope and addressed to the secretary of state, who shall preserve the ones addressed to "the speaker of the house of representatives" unopened, until the meeting of the legislature, and from the duplicate copies prepare a tabular sheet of the votes cast for such officers and preserve the same for the use of the legislature in making the official canvass as required by the constitution.

1635. The **votes** cast for presidential electors, judges of the supreme and district courts, and regents of the university shall be **canvassed by** a **board** of state canvassers consisting of the governor, secretary of state, auditor of public accounts, treasurer, and attorney general, and a copy of the abstracts of votes cast for such officers shall be made by the county clerks, sealed up, directed to the secretary of state, and endorsed, "Election returns for the offices of ———."

1636. If the **abstracts** from any county are **not received** at the office of the secretary of state by the second Monday after the day of election, the secretary is authorized to send a messenger to the clerk of such county, at the expense of such county, who shall furnish such messenger with the abstracts, or, if they have been sent, with a copy of them, and he shall return them to the secretary without delay. If the abstracts were delayed by reason of the fault or neglect of the clerk, he shall be responsible to the county for the costs of the messenger.

1637. The **abstracts** of votes to be canvassed by the board of state canvassers shall be **kept** in the office of the secretary of state, and shall only be opened in the presence of such board at the time provided in the following section.

1638. The board of **state canvassers** shall **meet** at the office of the secretary of state on the third Monday after the election; and in case all of said returns shall not have then be[en] received at the office of the secretary of state, the board may adjourn from day to day, until the same shall have been received, not exceeding five days.

1639. They shall **make** an **abstract** stating the number of ballots cast for each office, the names of all the persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to the office, which abstract shall be signed by the canvassers in their official capacity, and as state canvassers, and have the seal of the state affixed, but should any two or more persons be returned with an equal and the highest vote, the board shall decide by lot which of said persons is elected.

1640. The secretary shall **record** the **abstract** in a book to be kept by him for recording the result of the state elections and to be called the election book, and also file the abstract.

1641. A **certificate** shall be prepared for each person elected, in substance as follows: State of Nebraska: At an election holden on the —— day of ——— A. B. was elected to the office of ———, for the term of —— years from the ——— (or, if to fill a vacancy, say, for the residue of the term ending on the —— day of ———, A. D. ——). Given at Lincoln this —— day of ———, A. D. ——. Such certificate shall be signed by the governor, under the seal of the state, and countersigned by the secretary of state.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

1642. The **certificate** of election for presidential **electors** shall be served on each person elected, notifying him to attend at the seat of government at noon of the Saturday preceding the second Monday of January next after his election, and report himself to the governor as in attendance.

Time of meeting changed 1889, p. 472.

1643. The **electors** so attending shall **meet** at noon of the said Saturday, and the governor shall provide each of them a list of all the electors, and in case of the absence of any elector, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and immediately issue a certificate of election, signed by those present, or a majority of them, to the person so chosen. In case of failure to elect by noon of the following day, the governor shall fill the vacancies by appointment.

Time changed 1889, p. 472.

1644. The college of **electors,** being full, shall **meet** at the capitol at noon of the said second Monday of January, and proceed to the election in conformity with the constitution of the United States.

Time changed 1889, p. 472.

1645. The electors shall receive a **compensation** of five dollars for every day's attendance, and the same mileage as members of the legislature.

ON CONTESTING ELECTIONS.

1646. The **election** of any person to any public office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be **contested:** 1. For malconduct, fraud, or corruption on the part of the judges of election in any precinct, township, or ward, or of any board of canvassers, or any member of either board sufficient to change the result. 2. When the incumbent was not eligible to the office at the time of the election. 3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights. 4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or anything of value for the purpose of procuring his election. 5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result. 6. For any error in any board of canvassers in counting the votes, or in declaring the result of the election if the error would change the result. 7. When the incumbent is in default as a collector and custodian of public money or property. 8. For any other cause which shows that another person was legally elected.

A contest is a legal remedy. **15,** 304 (18 N. W., 93). Under subdivision 6, a remedy by contest may not be adequate and is not exclusive. **11,** 107 (7 N. W., 743). Extrinsic evidence may be received to show intention of voter. **5,** 170. Must be eligible at the time of election. **23,** 385 (36 N. W., 587). This remedy is cumulative and not exclusive of *quo warranto*. **28,** 456 (44 N. W., 471). Military post at Valley not a reservation of the United States and residents thereof entitled to vote at county elections. **5,** 172.

1647. The term "**incumbent**" in this chapter means the person whom the canvassers declare elected.

1648. When the **misconduct** complained of is on the part **of** the **judges** of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township, or ward would change the result as to that office.

1649. The **legislature** in joint meeting shall **hear** and determine **cases** of contested election for all officers of the executive department. The meeting of the two houses, to decide upon such elections, shall be held in the hall of the house of representatives, and the speaker of the house shall preside.

1650. The **senate** and **house** of representatives shall **severally hear** and determine contests of the election of their respective members.

1651. The supreme court shall hear and determine **contests** of the election **of judges** of the supreme court, judges of the district courts, district attorneys, and regents of the university; and in case they shall disagree, the governor shall act with them in determining the contest, but no judge of the supreme court shall sit upon the hearing of any case in which he is a party.

1652. The district courts of the respective counties shall hear and determine **contests of** the election of **county judge,** and in regard to the **removal** of county seats, and in regard to any other subject which may by law be submitted to the vote of the people of the county, and the proceedings therein shall be conducted as near as may be hereinafter provided for contesting the election of county officers.

1653. The county courts shall hear and determine contests of all **other county,** township, and precinct **officers,** and officers of cities and incorporated villages within the county.

County court has no jurisdiction to try contest of election in city on question of voting aid to a work of internal improvement. 13, 399 (14 N. W., 394). County court has exclusive original jurisdiction of contest over office of county attorney. 26, 252 (41 N. W., 1093).

1654. Whenever any elector of this **state** chooses to contest the validity of the election of any of the **officers** of the executive department of the state, or whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof in writing, read such **notice** to and leave a copy thereof with the person whose election he intends **to contest,** within twenty days after the election; if the person cannot be found in his district, then a copy to be left at his last place of residence in the district, naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions.

If the persons selected to take depositions refuse to take testimony offered relating to the points of contest, they may, after entering upon their duties, be compelled, by mandamus, to proceed. 11, 103 (7 N. W., 753).

1655. The **notice** provided for in the preceding section shall be **served** at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony shall have been taken and reduced to writing; *Provided*, That such testimony shall be finally closed on or before the 29th of December following.

Notice held sufficient. 11, 102 (7 N. W, 753).

1656. No **testimony** shall be **received** by the person officiating at the taking of the depositions on the part of the contestant which does not relate to the points specified in the notice, a copy of which notice shall be delivered to the person or persons so officiating, and said testimony, together with a copy of the notice, when taken, shall be certified by the person or persons before whom the same is taken, enveloped, **sealed** up, endorsed "Depositions taken in the matter of the contest of the election of A. B. to the office of ———," and directed to the secretary of state, who shall preserve the same, unopened, till the meeting of the legislature.

It seems that the persons selected to take depositions have power to determine what testimony is applicable to the points specified in the notice. 11, 103 (7 N. W., 753).

1657. If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the **ballots** or the poll books of any election district or districts should be **inspected,** the officer or officers before whom such despositions shall be taken shall, on request of either party to the contest, issue an order requiring the county clerk, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions as provided in the preceding section.

1658. On the second day of the organization of the legislature, the **secretary** of state shall **deliver** to the speaker of [the] house **all papers** relating to contested elections of executive officers, and to the presiding officers of each house all papers relating to contested elections of the members of their respective houses.

1659. [**Meeting of houses.**]—Upon the reception by such presiding officers of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of any executive state officer, the house of representatives shall notify the senate, and a day shall be fixed by both houses by concurrent resolution for the uniting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

1660. The **papers** relating to any such contest shall be **opened** only in the presence of the body by the presiding officer to whom the same shall be delivered. If ballots or poll books are contained therein, they shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope and returned by mail or otherwise to the office of the county clerk in which they were first required to be filed.

1661. All the **evidence** in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be **preserved** in the office of the secretary of state.

1662. The **election** of any person declared elected to any office, other than executive state officers and members of the legislature, may be **contested by any elector** of the state, judicial district, county, township, precinct, city, or incorporated village in and for which the person is declared elected.

In case stated, held that mandamus would lie notwithstanding this statute. **10**, 63 (4 N. W., 514).

1663. The **contestants** shall file in the proper court, within twenty days after the votes are canvassed, a **complaint**, setting forth the name of the contestant, and that he is an elector competent to contest such election, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which complaint shall be verified by the affidavit of the contestant that the causes set forth are true as he verily believes. The contestant must also file a bond, with security to be approved by the clerk of the court, or county judge, as the case may be, conditioned to pay all costs in case the election be confirmed, the complaint dismissed, or the prosecution fail.

Held sufficient if statute prescribing it followed; must show an adverse interest. **26**, 419 (42 N. W., 401).

1664. When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the **names** of the persons who so voted, or whose votes were rejected, if known, with the precinct, township, or ward where they voted or offered to vote, shall be **set forth** in the complaint.

1665. Upon the filing of such complaint, **summons** shall **issue** against the person whose office is contested, in the same manner as in civil actions, and a copy of the complaint shall in all cases accompany the summons.

1666. The cause shall stand for **trial** at the expiration of thirty days from the time of service of the summons and complaint, if the court shall then be in session; otherwise, on the first day of the next term thereafter.

1667. The **trial** shall proceed at the time appointed unless **postponed** for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

1668. The **proceedings** shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence, or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the **rules of law** and evidence applicable to the case.

1669. The **testimony** may be oral, or by depositions taken as in other actions in the court where the cause is tried. Subpœnas for witnesses may be issued as in other cases, any time after the filing of the complaint.

1670. The proceedings shall not be dismissed for **want of form,** if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest. If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such **adjournment** shall be upon such terms as the court deem reasonable; but if all the causes are held insufficient, and an amendment is asked, the adjournment shall be at the cost of the contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

1671. The style, form, and manner of **service** of process and papers, and the **fees** of officers and witnesses shall be the same as in other cases in the court where the cause is tried.

1672. The court may **require** any person called as a **witness** who voted at such election **to answer** touching his qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to answer for whom he voted; and if the witness answer such questions, no part of his testimony on that trial shall be used against him in any criminal action.

1673. If an **inspection** of the **ballots** or poll books of any election district in this state shall become necessary for the determination of any election contest before any court, the presiding judge thereof may by order, naming the district or districts, require the proper officer to procure the same from the county clerk, or other person in whose possession or custody the same may be, and such clerk or person shall deliver the same to said officer, who shall deliver them unopened to such presiding judge.

1674. The presiding **judge** shall **open and inspect** the same in open court, in the presence of the parties or their attorneys, and immediately after such inspection shall again seal them in an envelope and return them by mail or otherwise to the office of the county clerk in which they were first required to be filed.

1675. The contestant and the incumbent are liable to the officers and witnesses for the **costs** made by them respectively. But if the election be confirmed, or the complaint be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

1676. The **judgment** of the court in cases of contested election shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected.

If the election is void, court should so declare. 16, 215 (20 N.W., 213).

1677. If it appears that **two** or more persons **have**—or would have had if the legal ballots cast or intended to be cast for them had been counted—the highest and an **equal number** of votes for the same office, the persons receiving such votes shall decide by **lot,** in such manner as the court shall by written order direct, which of them shall be declared duly elected; and the judgment shall be entered accordingly.

1678. [**Judgment of ouster.**]—When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the court shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

A supersedeas bond will not stay the judgment of district court in contest for office of councilman; nor will injunction against the successful party lie. **28,** 103 (44 N. W., 90).

1679. When the person whose **election** is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void.

1680. The party against whom judgment is rendered in cases tried in the county and district court may **appeal** to the district or supreme court, and if the appellant be in possession of the office, such appeal shall not supersede the execution of the judgment of the court as provided in the preceding section unless he give a **bond** with security, to be approved by the court, in a sum to be fixed by the court and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered; and said bond shall contain the express consent that judgment may be rendered against the sureties on the appeal as provided in the following section.

Not necessary that appellant should himself sign appeal bond. **14,** 231 (15 N. W., 236).

1681. If upon the appeal the **judgment** be **affirmed,** the appellant court shall render judgment against the appellant and the sureties on his bond, or either of them, for the amount which the appellee is entitled to recover from the appellant on account of such contest, together with costs; but in such case the sureties, or either of them, shall be entitled to produce and examine witnesses concerning the amount of such recovery.

1682. If upon **appeal** the appellant shall not be in possession of the office, he shall give **bond,** with security to be approved by the court where the judgment is rendered, conditioned to pay all costs that may be adjudged against him upon such appeal.

Appeal bond held to be in due form and valid though not signed by appellant himself. **14,** 231 (15 N. W., 236).

1683. Every civil **office** shall be **vacant** upon the happening of either of the following events at any time before the expiration of the term of such office, as follows: 1. The resignation of the incumbent. 2. His death. 3. His removal from office. 4. The decision of a competent tribunal declaring his office vacant. 5. His ceasing to be a resident of the state, district, county, township, precinct, or ward in which the duties of his office are to [be] exercised, or for which he may have been elected. 6. A failure to elect at a proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provisions relating thereto. 7. A forfeiture of office as provided by any law of the state. 8. Conviction of an infamous crime, or of any public offense involving the violation of his oath of office. 9. The acceptance of a commission to any military office, either in the militia of this state, or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period not less than sixty days.

A vacancy may exist though the duties of the office are being performed temporarily by an appointee. **17,** 599 (24 N. W., 282). See **26,** 399 (41 N. W., 988).

1684. **Resignations** of civil officers may be made as follows: 1. By the governor, to the legislature, if in session; if not, to the secretary of state. 2. By senators and representatives in congress, and by all officers elected by the qualified voters of the state, and by judges of the supreme and district courts, district attorneys, and regents of the university, to the governor. 3. By members of the senate and house of representatives, to the presiding officers of their respective bodies, if in session, who shall immediately transmit information of the same to the governor; if such bodies are not in session, to the governor. 4. By all county and precinct officers, to the county board; and by members of the board, to the county clerk. 5. By all township officers, to the township clerk; and by the township clerk, to the town board. 6. By all officers holding appointments, to the officer or body by whom they were appointed. Such resignation shall not take effect until accepted by the board or officer to whom the same is made.

A supervisor is a township officer, resignation of addressed to town clerk. **26,** 586 (42 N. W., 729).

1685. **Vacancies** shall be **filled** in the following manner: In the office of the reporter of the supreme court, by the supreme court. In all other state and judicial district offices, and in the membership of any board or commission created by the state, where no other method is especially provided, by the governor. In county and * precinct offices, by the county board; and in the membership of such board, by the county clerk, treasurer, and judge. In township offices, by the town board, but where the offices of the town board are all vacant the clerk shall appoint, and if there be no town clerk, the county clerk shall appoint. In city and village offices, by the mayor and council or board of trustees.

* "Precinct offices" added 1883, p. 226.

1686. Every **officer** elected or appointed for a **fixed term** shall hold office until his successor is elected, or appointed and qualified, unless the statute under which he is elected or appointed expressly declares the contrary. This section shall not be construed in any way to prevent the removal or suspension of such officer during or after his term in cases provided by law.

1687. **Appointments** under the provisions of this chapter shall be in writing, and continue until the next election at which the vacancy can be filled, and until a successor is elected and qualified, and be filed with the secretary of state or proper township clerk, or proper county clerk respectively.

1688. When a **vacancy** occurs in a public office, **possession** shall be taken **of the office** room and of the books, papers, and all things pertaining to the office, to be held **until** the election or **appointment** and qualification of a successor, as follows: Of the office of county clerk, by his deputy, if there be one; if not, by the county judge; and in case of any delay in the election or appointment of a successor to the county clerk, his deputy shall continue to discharge the duties of the office, being responsible for the conduct and management thereof upon his official bond.

Of the office of county treasurer, by the sheriff. Of any of the state officers, by the governor; or in his absence or inability at the time of the occurrence, as follows: Of the secretary of state, by the treasurer. Of the auditor of public accounts, commissioner of public lands and buildings, and superintendent of public instruction, by the secretary of state. Of the treasurer, by the secretary of state and auditor of public accounts, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor, if he be in the state; and the secretary of state shall take the keys of the safes and desks, after depositing the books, papers, money, and warrants therein, and the auditor shall take the key of the office room.

1689. **Vacancies** occurring in any state, judicial district, county, precinct, township, or any public elective office, thirty days prior to any general **election,** shall be filled thereat. Vacancies occurring in the office of county judge or justice of the peace shall be filled by election, but when the unexpired term does not exceed one year the vacancy shall be filled by **appointment,** as provided in section one hundred and three. Vacancies occurring in the office of any police magistrate in cities where the unexpired term does not exceed one year shall be filled by appointment, but vacancies occurring in such office less than thirty days prior to any city election, and where the unexpired term exceeds one year, shall be filled by special election. And any person so appointed or elected under the provisions of this section shall hold his office for the unexpired term.

Amended 1883, p. 227. Vacancy in office of councilman of city of first class, occurring less than thirty days before city election, cannot be filled thereat. **29,** 206. See **21,** 223 (31 N. W., 788).

1690. When a vacancy occurs in the office of representative in **congress,** or members of the **legislature,** and the body in which such vacancy exists will convene prior to the next general election, the governor shall order a **special election** to fill such vacancy at the earliest practicable time, and ten days' notice of such election shall be given.

1691. The provisions relating to general elections shall govern **special elections,** except where otherwise provided for.

1692. In all cases where special elections are held to fill vacancies in offices mentioned in the preceding subdivision, the board of canvassers shall meet at twelve o'clock M., on the third day after said election, to **canvass** the votes cast at such election, and the county clerk, within four days after any special election for a member of the legislature, or representative in congress, shall transmit to the secretary of state an abstract of the votes cast at said election, if there be more than one county in the district.

1693. Within ten days after said election in the case last mentioned, the board of **state canvassers** shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding five, for the purpose of receiving said returns.

Secs. 1694 to 1702. "An act to protect **primary elections** and conventions of political parties and punish offenses committed thereat." 1887, p. 454. In force March 26.

1694. If at any political primary election, held by any political party, organization, or association in the state, any individual shall falsely personate and vote under the name of any other person, or shall intentionally vote without the right to do so, or shall willfully and wrongfully obstruct and prevent others from **voting** who have the right to do so at such primary, or shall **fraudulently** and wrongfully deposit ballots in the ballot-box, or take them therefrom, or shall commit any other fraud or wrong, tending to defeat or affect the result of the election, he shall be deemed guilty of a **misdemeanor.**

1695. Political parties, organizations, or associations in this state may adopt such **rules** and regulations, and appoint presiding officers and inspectors of election, at any primary election that they deem just and proper; *Provided*, That in all cities of the metropolitan, first, and second class the **polls** at all such primary elections shall be opened at 12 o'clock noon, and closed at 7 o'clock in the afternoon, standard time, on the day on which such elections are held.

1696. The vote or ballot of any person offered at any such election shall, upon **challenge** by any lawful voter thereat, be rejected, unless he be sworn as to his qualifications as such voter; and the presiding officer or any inspector of such primary is hereby empowered, and it shall be his duty, to administer an oath to such person and to any other person offering to vote, as he may deem advisable, which **oath** shall be as follows: "You do solemnly swear (or affirm) that you will true answers make to such questions as shall be put to you, by the presiding officer, or either of the inspectors of this primary election touching your name and residence, and your qualifications as a voter in this district, ward, or precinct, and whether you have before voted at this primary election." And it shall be the duty of the presiding officer, or one of the inspectors at such primary election (if required by the person challenging), to keep a correct record of the interrogatories propounded by said presiding officer or inspector, to any person who shall have been duly sworn, as provided by this act, and also a correct record of the answers to all such interrogatories, which record shall be forthwith deposited by him or them with the clerk of the county in which said primary election is held.

1697. In case the person so swearing shall intentionally make false answer to any questions so put to him by the presiding officer or any inspector, or either of them, at such primary election, he shall, upon conviction, be adjudged guilty of **perjury,** and shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than three years.

1698. If any person, acting as an **officer,** inspector, teller, or canvasser at any such primary election shall knowingly receive the vote of any individual who shall have been challenged, or who is known to him not to be entitled by the rules or regulations of the association, organization, or political party holding the primary election, to vote at such primary, unless the same shall first be sworn in as aforesaid, or shall in any manner fraudulently and wrongfully deposit or put any ballots into or take any from the ballot-box of any primary election, or shall fraudulently and wrongfully mix any ballots with those cast at any primary election, or shall knowingly make any false count, canvass, statement, certificate, or return of the ballots cast or vote taken at said primary election, he shall be deemed guilty of a **misdemeanor.**

1699. **[Bribery.]**—If any person who is entitled to vote, or is elected a delegate at any such primary or convention, shall accept or receive any money or valuable thing as a consideration for his vote he shall be deemed guilty of a misdemeanor.

1700. The words "**primary election,**" as used in this act, shall be **construed** so as to embrace all elections, held by any political party, convention, organization, or association, or delegates therefrom, for the purpose of choosing candidates for office or the election of delegates to other conventions, or for the purpose of any political party, organization, convention, or association.

1701. No **person** shall be **entitled to vote** at any primary election unless of the age of twenty-one years, and a duly qualified voter under the laws of this state, and the prescribed rules and regulations of the political party, organization, or association holding the primary election.

1702. The **punishment** of any of the offenses in this act declared to be misdemeanors shall be a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both such fine and imprisonment.

Secs. 1703 to 1745. "An act to require and regulate the **registration of voters** for election purposes in metropolitan cities, cities of the first class, and cities of the second class, which shall include all portions of the voting precincts in which said city is situated, in the state of Nebraska." 1889, p. 431. In force July 1.*

1703. It shall be the duty of the mayor and council of any metropolitan city or city of the first class or city of the second class having over two thousand five hundred (2,500) inhabitants, which shall include all portions of the voting precinct in which said city is situated, to cause to be prepared **books for** the **registration** of names and facts required by this act. Said books to be known by the general name of registers, and to be so arranged as to admit of the entering, under the name of each street or avenue in each election precinct and the number of each dwelling on any such street or avenue, if there be a number thereto, and if there be no number, then under such definite description of the location of the dwelling place as shall enable it to be readily ascertained and found, the names of all legal voters in each dwelling in each of said precincts, who shall apply for registration. Such register shall be ruled in parallel columns, in which, opposite the name of every applicant for registration, shall be entered the words and figures hereinafter provided in this act, and shall be of such size as to contain not less than eight hundred (800) names, and so prepared that they may be used at each election in any city governed by the provisions of this act, until such time as in this act provided for the succeeding general registration, and shall on the inside be in form as follows, to-wit:

Residence.	Room No.	Address.	Sworn.	Nativity.	Color.		Term of Residence.					Court.	Qualified Voter.	Date of Application.	Why Disqualified.	Date of Erasing Name.	Voted November.	Month Voted.	Challenged.	Remarks.
							Precinct.	County.	State.	Naturalized.	Date of Papers.									

Registration laws are to be used as a shield to protect voters, not as a sword to disfranchise them. 17, 614 (24 N. W., 204).

1704. All **supervisors of registration** in said cities shall hereafter be selected and appointed by the city council, and the said council shall have the power to make all necessary removals in the office of supervisors of registration. It shall be the duty of said council, annually in the month of September in each year, for each election precinct in any such cities to select to serve as supervisors of registration, three (3) persons, two of whom, on state issues, shall be of political faith and opinion different from their associate, and the supervisor appointed to represent the political party in the minority on state issues shall be named solely by such members of said city council; the said supervisors shall be citizens of the United States and of state of Nebraska, of good character, and able to read, write, and speak the English language understandingly, qualified voters in said city, and not candidates for any office to be voted for by the electors of the precinct for which they shall be selected, and residents of the precincts for which they shall be appointed. The persons so selected as supervisors shall be notified by the city clerk to appear before the mayor, who shall examine them as to their qualifications, and if he shall be satisfied that they are qualified to serve, they shall each take and subscribe before the city clerk within ten days of the notice of the appointment, the following oath of office: "I, ———, residing at No. —— in the city of ———, do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Nebraska, and that I will faithfully and impartially discharge the duties of the office of supervisor of registration for the election precinct (or ward) No. ——, of the city of ———, according to the laws of the state and the best of my ability; and that I am a citizen of the United States and of the state of Nebraska, a qualified voter in election precinct (or ward) No. ——, in the city of ———, and not a candidate for any office to be voted for by the voters of the precinct for which I am appointed supervisor." Whoever shall be nominated and sworn into office as a supervisor of registration shall receive a certificate of appointment from said city clerk, and said certificate shall be in such form as shall be prescribed by the city council, and to specify the election precinct or ward in and for which the person to whom the same is issued is appointed to serve, and the date of the expiration of his term of office. The supervisors of registration appointed under the provision of this act shall hold office for one year, unless sooner removed by the mayor for want of requisite qualifications, or by said council for cause, in either of which cases such removal, unless made while the supervisor is actually on duty on the day of registration or revision of registration, and for improper conduct as registration officer, shall only be made after notice in writing to the officer sought to be removed, which notice shall set forth clearly the reason for his removal; *Provided*, That any supervisor of registration who shall at any time be appointed to fill a vacancy, which fact shall be stated in his certificate of appointment, shall hold office only during the unexpired term of his predecessor. The said supervisor of registration shall have charge and control of the registration of voters and the revision of any registration in their respective precincts.

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*Act of 1887, p. 392, providing for elections in cities, and requiring registration on one of four days, the last being ten days prior to election, held unconstitutional. 22, 265 (34 N. W., 499).

1705. Any **person applying to register** may, on any day of any general registration or revision of registration, be **challenged** in the said cities, and either of the said supervisors in any election precinct may, at any authorized meeting of said supervisors, and one of them shall administer to any person so challenged, the oath or oaths provided by law to test the qualifications of challenged voters, and either of said supervisors may, at any such meetings, administer to any applicant for registration the oath or oaths provided in this act to be administered to any such applicant, and may also administer to any elector of the election precinct who may be offered as a witness to prove the qualifications of any person claiming the right to be registered the following oath:

FORM OF OATH TO WITNESS.

"You do solemnly swear (or affirm) that you are a voter in this election precinct; that you will fully and truly answer all such questions as shall be put to you touching the place of residence and other qualifications as a voter of (name to be given) now claiming the right to be registered as a voter in this precinct."

1706. Whenever, from any cause, there shall exist a **vacancy** in the office of supervisor of registration, the person appointed to fill such vacancy shall be named by the council as hereinbefore provided.

1707. **Supervisors** of registration appointed in pursuance of the provisions of this act shall each be entitled to receive three (3) dollars per day for each day's service at any registration, or revision of any registration, which **compensation** shall be allowed by the city council on the certificate of the city clerk as to the time of service; but no payment shall be made to any person as a supervisor as aforesaid who shall not have taken, subscribed, and filed the **oath** or affirmation herein required, and who shall not, during the period of his service, have fully complied with all the requirements of law in anywise relating to his duties; and it shall be unlawful for any person to act as such supervisor without having taken, subscribed, and filed the said oath or affirmation, and any person so unlawfully acting shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in any sum not less than fifty ($50) dollars, nor more than one hundred ($100) dollars, or imprisoned in county jail for not less than ten (10) days, nor more than sixty (60) days, or both, and shall stand committed until all fines and costs are paid. Said supervisors, during the time that they hold such office, shall be exempt from the performance of **jury duty.**

1708. Each and every person appointed by the city council for **supervisor** of registration, under this act, shall, on receipt of notice thereof from the city clerk, appear within five (5) days thereafter before the mayor for examination, and if found qualified shall, unless excused by the mayor by reason of ill health or other good and sufficient cause, be bound to serve as such officer for the term of one year from the date of his appointment, and in case of the **neglect** or refusal of any such person to comply with the above requirement, **or to serve** or act, unless excused as aforesaid, the said person shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be **fined** in any sum not less than fifty ($50) dollars, nor more than two hundred ($200) dollars, and shall stand committed until such fine and the costs are paid, and said fines shall be for the use of the police fund.

1709. The said supervisors of registration in each election precinct in any city governed by this act, while discharging any of the duties imposed upon them by this act, shall have full **authority** to preserve order and enforce obedience to their lawful commands, at and around the place of registration, or revision of registration, during the time of registration, or revision of registration; to keep the access to such place open and unobstructed; to prevent and suppress riots, tumults, violence, disorder, and all improper conduct tending to the intimidation or obstruction of voters; to prevent the disturbance or interruption of the work of registration, or revision of registration, and the registers from violence or fraud, and to appoint or deputize, if necessary, one or more voters to communicate their orders and directions, and to assist in the enforcement thereof, and any person neglecting or refusing to act when so appointed or deputized shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in any sum not less than ten ($10) dollars, nor more than one hundred ($100) dollars, and shall stand committed until such fine and the costs are paid.

1710. Hereafter there shall, in the cities governed by the provisions of this act, be a general **registration** of the qualified voters resident in each election precinct in said cities, at the **times** hereinbelow provided, and then only on Tuesday, four weeks, the Wednesday of the third week the Thursday of the second week, and the Friday and Saturday of the first week, preceding the day of the November election in each year. For each and every election held in any of the said cities, other than such as are above designated in this section, there shall be a revision of the general registration had, as provided in this act, which revision shall be made on the Friday and Saturday of the second week, and on the Saturday of the first week preceding the day of each and every such election.

1711. The **supervisors** of registration appointed pursuant to the provisions of this act shall, at the times in this act designated for general registration, meet in their respective election precincts, at the places which, as provided in this act, shall be selected for such meetings, and at such times in each election precinct the said supervisors of registration shall openly and publicly do and perform the following acts, viz: 1st. They shall **organize** as a board by selecting one of their number to act as chairman, but in case of failure to so organize within fifteen minutes after the time fixed for the meeting, the chairman shall be selected by lot. 2d. They shall **receive** the **application** of registration of such legal voters of their several election precincts as then are, or on the day of election next following the day of making such applications would be, entitled to vote therein, and who shall personally present themselves for registration, and such only. 3d. They shall **remain in session** on each of said days of registration, or revision of registration, from the hour of 8 o'clock in the morning until 9 o'clock in the evening and administer to all persons who may personally apply to register the following oath or affirmation, viz: "You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this state." 4th. They shall then **examine** the **applicant** as to his qualifications as an elector, and, unless otherwise provided herein, shall immediately, in the presence of the applicant, enter in the registers to be made and furnished, as provided in this act, the statements and acts as above set forth, and in the manner following, viz: *First*—Under the column "Residence," the name and number of the street, avenue, or other location of the dwelling if there be a number; but if there shall not be a number, then such clear and definite description of the location of such dwelling as shall enable it to be readily found; and if there be more than one family residing in the dwelling named by the applicant, in such case the said applicant shall give the floor on which he resided (every floor below the level of the ground being designated as the basement, the first floor on or above such level the first floor, and each floor above that as the second or such other floor as it may be), or the number or location of the rooms occupied by the applicant and whether front or rear. *Second*—Under the column "Address," the name of the applicant, giving the surname and Christian name in full, and said names shall be kept by streets and avenues as far as the same can be done. *Third*—Under the column "Sworn," the word "Yes" or "No" as the case may be. *Fourth*—Under the column "Nativity," the state, country, kingdom, empire, or dominion, as the facts shall be stated by the applicant. *Fifth*—Under the column "Color," the word "White" or "Black" as the case may be. *Sixth*—Under the subdivision of the general column of "Term of Residence," the periods by months or years stated by the applicant in response to the inquiries made for the purposes of ascertaining his qualifications and filling such columns. *Seventh*—Under the column "Naturalized," the word "Yes" or "No" or "Native" as the fact may be stated. *Eighth*—Under the column "Date of Papers," the date of naturalization if naturalized, as the same shall appear by the evidence of citizenship submitted or presented by the applicant in compliance with the requirements of this act. *Ninth*—Under the column "Court," the designation of the court in which, if naturalized, such naturalization was done, as the same shall appear by the evidence of citizenship presented or submitted by the applicant in compliance with the requirements of this act. *Tenth*—Under the column "Qualified Voter," the word "Yes" or "No" as the fact shall appear and be determined by at least two (2) of the said supervisors, it being, however, required of said supervisors to designate as a qualified voter any person, who, being otherwise qualified, shall not, at the time of making the application, be of age, provided the time when such applicant shall be of the age of twenty-one (21) shall be subsequent to the date of his making application, and not later than the day of the election immediately following such time of applying. *Eleventh*—Under the column "Date of Application," the month, day, and year when the applicant presented himself for registration.

The certificate is conclusive as to age in all collateral proceedings. **25**, 202 (41 N. W., 152).

1712. On the days and at the times in this act designated for any **revision of** any general **registration,** the duly qualified supervisors of registration shall meet in their respective election precincts, at the places which, in accordance with the requirements of this act, shall have been provided for such meetings, and shall openly and publicly do and perform the following acts, viz: Each and every one of the duties and requirements set forth in subdivisions one (1) and three (3) of section nine (9) of this act [1711]. They shall in each election precinct receive the application for registration of such legal voters of the election precinct, whose names are not then borne upon the registers thereof as qualified voters therein, as shall personally present themselves, and who, on the day of election next ensuing, would be entitled to vote therein, and as to all applications made to them, they shall proceed therewith in the manner provided in subdivision four (4) of section nine (9) of this act; *Provided*, That upon the examination, as in this act provided for, of any applicant for registration, it shall appear that he has, since the last day of any general registration of voters or any revision thereof, in cities governed by this act, moved into or become a resident of said election precinct, the said supervisors shall inquire from where such applicant removed or came; and if it shall appear that such removal was from a place within the said city, they shall inquire if, in the election precinct in which he resided at the time of the last preceding general registration (naming such time), or in which he has resided at any time subsequent thereto, he has been registered, or has applied for registration; and if he shall swear that he has not, then the said supervisors shall proceed with said application as with that of any other person who may apply to them; but if he shall swear that he has been so registered, the said supervisors shall, before proceeding further, require him to present them a certificate of removal as provided for in this act, so that his name shall not be on the registers of two election precincts; and upon presentation to any board of supervisors of any certificate of removal, the said board shall treat the person presenting the same, in the same manner provided in subdivision four (4) of section nine (9) of this act [1711] for applicants for registration.

1713. Any person who shall at any time, as provided in this act, have personally applied to the said supervisors in any such election precinct for registration, and shall have, in the register thereof, been entered as a qualified **voter,** and who shall at any time prior to the close of any general registration, or revision of registration, have removed from the dwelling place under which he shall, as a resident, be borne upon the register, may, upon any day provided in this act for the meeting of said supervisors, personally appear before the supervisors in any election precinct in which he resided at the time his name was entered upon said register, during the hours provided in this act for the meetings of said supervisors, and publicly take and subscribe before one of said supervisors the following oath or affirmation, which shall be known as the oath of **removal,** viz: "I, ———, residing at No. ——, in election precinct No. ——, of the city of ———, do solemnly swear (or affirm) that I am duly entered on the registers of said election precinct, from said residence as a qualified voter, and that I have removed my place of residence to No. ——, in election precinct No. ——, in said city, and I do hereby request that the proper entries and records be made as the same are provided for by law, and that a certificate of removal be furnished me at this time." Upon such oath or affirmation being made and subscribed as herein provided, it shall be the duty of said supervisors to carefully preserve the same and file it within twenty-four (24) hours after the close of any registration or revision, with the city clerk; and upon any such person taking and subscribing said oath of removal the said supervisors, if satisfied of the identity of the person making the same with the person he claims to be, as the description of said last mentioned person shall appear on the registers; (and if not satisfied therewith, shall at once, by a police officer, or by any one whom said board shall especially authorize, make an examination and enquire at the residence of said person, as the same shall be entered upon the registers as to the fact of the removal of such person from said dwelling place; when, if his removal therefrom shall be found by the report of such person to be a fact), shall immediately proceed to strike from said registers the name of such person, by entering in each of the registers, opposite to and against the name of such person, and in the column headed "why disqualified," the word "removed," and in the column headed "date of erasing name," the month, day, and year of such striking from said registers such name, and in the column headed, "remarks" the words "transferred to," together with the number of the election precinct to which such person shall, in his oath of removal, state he has removed, and the initial letters of the name of each supervisor who shall, in each of said registers, make such entry, and shall through the name of such person as the same shall appear on such registers, and there only, draw a red line indicative that such name is erased from the registers of that election precinct, and the name of any such person so found stricken and erased from said registers shall, as to his name entered under the column "residence," be thereafter considered by all election officers to be stricken from the rolls of that election precinct, and shall be treated as if never entered thereon. If the dwelling place to which any such person shall have removed be within the boundaries of the same election precinct as was his former residence as shown by the registers in said election precinct, the said supervisors shall, in said registers under the number or other description of the dwelling place in which such person has removed, enter his name, and in the several columns opposite and against the same, such words and figures as, prior to the striking from or erasing of the name of such person in the manner in this section above provided, were in the column similarly headed and opposite to and against the name of such person as upon said register it appeared under the dwelling from which he shall have declared he has removed; and if the dwelling place to which he shall have removed shall be within the boundaries of any other election precinct than was the residence under which he was previously entered on said registers, the said supervisors shall fill up, sign, and deliver to such person a certificate, which shall be known as the certificate of removal, and shall be in form as follows, viz:

CERTIFICATE OF REMOVAL.

Registration place of election precinct No. ——, in the city of ———, this —— day ——, 18—. To the board of supervisors of election precinct No. ——, in the city of ———: This is to certify that the name of ———, heretofore residing at No. ——, in this election precinct, has been by us, the supervisors of registration in this precinct, stricken from the registers of this precinct and the proper erasures made, upon oath of removal and at the request of said above named persons; and that upon said registers in this election precinct were entered as to him the following statement, viz: Name, ——; Residence, ——; Sworn, ——; Nativity, ——; Color, ——.

LEGISLATIVE DISTRICT ——.

Term of residence, ——; County, ——; State, ——; Naturalized, ——; Date of papers, ——; Court, ——; Qualified voter, ——; Date of application, ——.

1714. **[Entries on registers.]**—The said supervisors of registration in each election precinct shall, on each day of any general registration before adjournment, enter in each of two books prepared for that purpose, one of which shall be known as the public copy of the registers, and the other of which shall be known as the election bureau copy of the registers, all such names and residences, and all such dates, information, and statements as during the day have been entered by the said supervisors in the registers provided in this act, and the whole five books shall on each of said days, after a completion of said copies of the registers, be carefully compared throughout, so that each of said registers, and the copies thereof, shall in every respect agree with each other and contain the name and residence of each person who shall have applied for registration and the facts respecting him, as the same shall have been stated by him and entered in said registers, as provided in this act. The said supervisors shall, in the last day of any general registration, certify each of said copies in the same manner as if it were an original register, and within thirty-six hours after their adjournment on said last day of any general registration, the said supervisors shall file with the city clerk the election bureau copy of said registers at his office where the same shall be carefully preserved, and the said supervisors shall on the last day of any revision of registration, and before adjournment, make a copy of the registers as they shall then be made up for the election next ensuing, which copy shall be marked and known as a public copy of the original registers as then existing for the election next ensuing; and the said supervisors shall also make, fill, and certify, on blanks to be prepared and furnished by the city clerk for that purpose, the name and all other particulars as shall be entered against or opposite to the name of any person which, having been once entered upon said registers, shall have been on the days of any such revision of registrations for any reason stricken therefrom as provided in this act, together with the name and all other such particulars as shall be entered against or opposite the name of any person who shall on any day of any such revision have been added to said registers, and said blanks so filled and certified shall, within twenty-four hours after the close of the the last day of any revision of registration be left by said supervisors with the city clerk, and it shall be the duty of the city clerk to immediately enter, or cause to be entered, in the election bureau copy of the registers of each election precinct on file in his office, all the proper and necessary entries requisite to make said copy conform to said registers and be always a copy thereof.

1715. It shall be the duty of the city clerks in said cities, under the direction of the mayor and council, to prepare and furnish all necessary registers, books, maps, oaths, certificates, blanks, and instructions for the use of supervisors of registration, and to provide said officers with all necessary supplies, to have and retain the custody of all registers, copies thereof, records, papers, and certificates of every kind required by this act, to be filed and kept in his office. The said city clerk shall, for any revision of any general registration, issue to each of said judges in each election precinct in said cities one of the registers of said precinct in use therein at the preceding election, and returned to and filed by him in his office.

1716. The said supervisors of registration in each election precinct in any city governed by the provisions of this act, on each day of any general registration, or revision of registration, and before adjournment, shall, on each of the registers and on each copy thereof, as in this act provided, shall on each of said days be kept and made, draw in red ink immediately bolow the last name underneath each dwelling place and below the last figures and words entered opposite to or against such last name in each column, save that of residence, a heavy line as indicating that the entering of names on said registers for the day mentioned in the column headed "date of application," and opposite to or against the name of the last person entered under any dwelling place there ceased, and immediately under said red line on each of said registers, said **supervisors** shall each **sign** his name, so that no new name can be added without discovery.

1717. The said supervisors of **registration** shall, in a place to be provided therefor in each of the registers required by this act, fill up, date, and each sign with his name and place of residence, the appropriate and proper **certificate**, which shall be either printed or written, or partly printed and partly written, and for a general registration shall be in the form following, to-wit: "We, the undersigned, supervisors of registration in election precinct No. ——, in the city of ———, do jointly and severally certify that at the general registration of voters, held in said election precinct on the —— days of ———, 18—, and on the —— days of ———, 18—, and on the —— days of ——, 18—, there was registered by us as qualified voters in the said election precinct the names which in this register are entered as of said days, and that the number of such registered qualified voters was and is ———. ———, ———, ———, Supervisors of said election precinct No. —. Dated ———, 18—." And said certificates shall be made immediately after the last day of any general registration. And for a revision of any general registration, said certificate shall be in the following form, to-wit: "We, the undersigned supervisors of registration in election precinct No. —, in the city of ———, do jointly and severally certify that at a revision of the last general registration of voters held in said election precinct on the —— days of ———, 18—, and on the —— day of ———, 18—, there were by us added to the list of qualified voters of said election precinct the names which in the said registers are so entered as of said days, and that such number was and is ———, and that there were stricken from the registered qualified voters of said election precinct the names which in the said registers appear on said days to have been stricken off and erased in the manner prescribed by law, and that said number was and is ———, leaving the total number of registered qualified voters in said election precinct for the next ensuing year in said city ———, which is the number of names now borne in said registers, as such qualified voters for such election. ———, ———, ———, Supervisors of said election precinct No. —. Dated ———, 18—."

1718. The said supervisors of registration in each election precinct shall, after making and signing the said certificates named in section fifteen hereof, deliver all of said **registers** to the city clerk of such city, who shall retain and carefully preserve all the said registers and on the day of any election the said city clerk shall deliver said registers to the judges of election in the precinct named in said register The public copies of the register.—The said supervisors shall, at the close of their proceedings on the last day of any registration, or revision of registration, leave with the said city clerk, where said public copy shall be and remain until the next meeting of said supervisors for the purpose of registration, or revision of registration, to the end that they may be inspected and copied by any voter in said city. But on the day of any election, the judges of election shall take possession of said public copy and they shall closely retain the same throughout the said day, returning the same to the city clerk, and shall also, at the close of the canvass and return of the votes at any election, deliver to said city clerk the registers of each election precinct, which public copy and said registers shall be carefully **kept** and preserved by said city clerk. On the first day of any general registration, or revision of registration, the said city clerk shall deliver to said supervisors of registration the said public copy and the registers of their election precinct, and the said supervisors shall retain and preserve the said registers until after the completion of the general registration, or revision of registration, when the same shall be returned to said city clerk.

1719. It shall be the duty of the said supervisors of registration in each election precinct, on each day of general registration, or revision of registration, and before adjourning, to copy from the registers the names and residences of all persons registered upon that day, and to make such copy so that the names of those persons having the same residence shall appear together in form as follows:

List of voters in election precinct No. —— of the city of ——— on the —— day of ———, 18—.

NAMES.	RESIDENCES.
....	....
....	....
....	....
....	....

And they shall append thereto a certificate signed by each of said supervisors in the form following, to-wit:

"We, the undersigned, supervisors of registration in election precinct No. —— of the city of ———, do jointly and severally certify that the list hereto annexed is a true and correct copy of all the names and residences upon the registers, of all persons who have been registered by us as qualified voters in said election precinct, this —— day of ———, 18—.

——— ———,
——— ———,

"Supervisors of said election precinct No. ——."

And said supervisors shall immediately post said copy in some conspicuous place in the room or building where such registration, or revision of registration is had, and said copy shall be for public inspection and may be copied by any voter of said city. The city clerk shall prepare and furnish to said supervisors the necessary blanks and forms prescribed in this section.

1720. The judges of election in each of said election precincts shall, on the day of any election therein, have with them, at the polling place in said precinct, the registers provided for in this act. They shall each make use of one of said registers for guidance on said day, and no vote shall be received from any person unless the name of the person offering to vote be found by at least two of said judges to be upon at least two of said registers as a qualified voter; except that the person offering to vote, whose name is not on two of said registers, shall furnish to the said judges his affidavit, subscribed and sworn to before the city clerk, or some person designated therefor by the mayor, of any city governed by this act, giving his reasons for not appearing before the supervisors of registration on any day of registration, or revision of registration, and shall also set forth in said affidavit his place of residence and the facts necessary to show that he is a qualified voter in said precinct, and shall prove before said judges, by the affidavit or oath of at least two freeholders, residents of said precinct in which he offers his vote, for at least one year immediately preceding said election, that they know such person to be an inhabitant and qualified voter of said precinct; and upon filing said affidavit and making the proof herein required, the said person shall be entitled to vote. And any person offering to vote at any election may be challenged, and the same oaths shall be put as are prescribed by law. It is hereby made the duty of the city clerk of any such city, on request, to take and certify the affidavits herein required, without fee or reward, and on the day of any election in any such city, the said clerk shall be in his office and keep the same open from 8 o'clock A. M. until 7 o'clock P. M., on said day, for the purpose of taking said affidavits as herein provided. In case of the absence, on account of sickness or other cause, of the city clerk, the mayor of any such city shall designate some person, authorized to administer oaths, to take and certify said affidavits, at the office of the city clerk only, said person so designated by the mayor shall receive as compensation for each day's service the sum of five ($5) dollars, which shall be allowed by the city council on the certificate of said mayor. The chairman of judges in each election precinct, shall, if present, and if absent, then one of the other judges, shall upon any person offering to vote, announce, in a loud, clear, and distinct manner, the name of such person, and before any ballots shall be deposited in any of the ballot-boxes, at least two of said judges shall examine at least two of said registry lists, and if the name of said voter shall be found on at least two of said registry lists, as a qualified voter, then said judges shall receive and deposit the ballot in the proper ballot-box, and at least two of said judges shall write in the appropriate column in said registers, the word "Voted," and opposite to the name and residence of such person, the word "Yes." And no ballot shall be received by either of said judges, and deposited in any of the ballot-boxes at any election, unless the name of the person offering to vote shall be found on at least two of the said registers, or such person shall file with said judges the affidavit herein required, and shall also furnish to said judges the proof as in this section required. It shall be the duty of each of said judges to enter on the register in his possession, in a suitable and separate part thereof, the name and residence of each person voting whose name does not appear on at least two of said registers. It shall further be the duty of each of said judges, immediately on the close of the polls on the day of election, to compare the said registers as kept by them, as herein provided, and attach to them a certificate in writing that the same are correctly checked, and within twenty-four hours after the completion of the canvass of the votes cast in the election precinct in which they served, to leave all of said registers at the office of the city clerk, whose duty it shall be to file and preserve the same, and in no election precinct in any such city shall any judge, who has custody or charge of either or any of said registers in this act provided for, ever permit said register to leave his possession from the time of receiving custody of the same until he shall file the same as herein provided.

1721. Any person who is a qualified voter in any such city may, upon the date of any registration or revision of registration, **challenge** and contest the right of any person to be registered in any election precinct, or may require the name of any registered person to be marked for challenge, and on any such day or days shall be entitled to be heard by the supervisors of registration in any election precinct in relation to the correctness of or additions to any of said registers.

1722. Hereafter the mayor and council of any city governed by the provisions of this act, shall designate and appoint the **place of registry** in each election precinct in said city, and shall hire all such places as may be necessary and cause the same to be fitted up, warmed, lighted, and cleaned, and the work of registration shall be carried on at the places so designated. But in each election precinct such place shall be in a public, orderly, and convenient portion of the precinct, and no building or part of building shall be designated or used as a place of registration, or revision of registration, in which, or in any part of which, intoxicating liquors of any kind are sold or have been sold within ten days next preceding the time of using the same, and no place shall be designated or used for any such purpose without the same shall be well lighted with gas, unless there shall be no such place in the precinct attainable which is so lighted.

1723. At each place of registration, or revision of registration in any such city, each political **party** shall have the right to designate place and keep a **chal-**

lenger, who shall be assigned such position as will enable him to see each person as he offers to register, and who shall be protected in the discharge of his duties by the supervisors and the police. Each political party may remove any challenger appointed by it, and any vacancies which from any cause arise, shall be filled by the same party, power, and authority that conferred the original appointment.

1724. No **person** who is **registered** in one election precinct, in any such city, shall register in any other precinct while any prior registration remains unerased, or in any other manner than is in this act provided; but if in the event of the revision of any registration in such city, any person shall present himself for the purpose of being registered as a voter, and it shall appear that the name of said person is borne upon the registers of any election precinct other than that in which he shall at the time of such revision make application for registration, and that since the day of the preceding election or registration he has removed from the precinct in which he was then registered to the precinct in which he shall at the time of any such revision apply for registration, and it shall also appear that there is no meeting of the board of supervisors in the precinct in which his name shall be borne upon the register, then, and in such event, the oath of **removal** may be made before any member of the board of supervisors in any precinct to which he shall have removed, and the person so appearing at any such revision shall be entitled to all the rights and privileges to which he would be entitled were the registration a general registration, and the said person making an original application for registration.

1725. For all powers, authority, and duties, in this act prescribed for or conferred upon, and all actions required of supervisors of registration, or a board of **supervisors**, save where such authority is specifically allowed to each of said supervisors, the concurrence or assent of a **majority** of all the supervisors of registration in any election precinct must in all cases be obtained.

1726. The several officers of **supervisors** of registration, in this act named and created, are and shall be, in all courts and proceedings, **deemed** and held respectively to be election **precinct officers**, and it shall be the duty of said supervisors of registration respectively, or a majority of the said supervisors, to be in constant attendance during the hours and time fixed for the discharge of their several duties.

1727. All data, statistics, and all registers, poll books, and **records** of every kind and nature, which, under this act, or under any laws of this state, or which, in compliance with any ordinance, resolution, order, or direction of the mayor and council of any of said cities, are or may be required to be made, ascertained, or kept by, or returned to, or filed with the city clerk, shall, at all times during office hours, be **open to inspection**, examination, comparison, and copying by any voter of said city, free from any charge.

1728. If at any time a **special election** shall be held in any city governed by the provisions of this act, or in any portion of any such city, the same revision of registration shall be had and made for any such special election, and in the same manner as if the said election was a municipal election, for and throughout said city, and each and every of the provisions of this act, not inconsistent with the terms of this section, shall apply with as full force and effect to any such revision of registration therefor as if the same was for a municipal election in, for, and throughout said city.

1729. In each election precinct in said cities, it shall be the **duty of** the **judges** of election in each election precinct, immediately after the close of the polls on the day of any election, **before** proceeding with the **canvass** of the ballots in any box, and while the clerks of election are canvassing their books, to write in ink opposite to and against the name of each person entered in said registers, who is not shown by said registers to have voted, and in the column headed "vote," the word "no," so that the said column may be wholly filled up, and the said judges shall then compare said registers, and make them agree and ascertain the number of persons who by them are shown to have voted at that polling place that day; and when they have made comparisons and ascertained such fact, the chairman of the board of judges, or in his absence, one of the other judges, shall announce the same in a loud voice.

1730. The term "**precinct,**" as used in this act, shall be **construed** to mean and include any precinct, ward, or other division of territory in any city governed by this act, created, designated, and made by ordinance, for election purposes.

1731. If at any registration of voters, or at any meeting of supervisors of registration held for such purposes, or for a revision thereof as provided in this act, any **person** shall **falsely** personate an elector or other person, and **register,** or attempt or offer to register in the name of such elector or other person; or if any person shall knowingly or fraudulently register, or offer, or attempt, or make application to register, in or under the name of any other person, or in or under any false, assumed, or fictitious name, or in or under any name not his own; or shall knowingly or fraudulently register in two election districts; or, having registered in one district, shall fraudulently attempt, or offer to register at any election district not having a lawful right to register therein; or shall knowingly or willfully do any unlawful act to secure registration for himself or any other person; or shall knowingly, willfully, or fraudulently, by false personation, or otherwise, or by any unlawful means, cause or procure, or attempt to cause or procure, the name of any qualified voter in any election precinct to be erased, or stricken from any register of the voters of such precinct, made in pursuance of this act, or otherwise than in this act provided; or by force, threat, menace, intimidation, bribery, reward, or offer or promise thereof, or other unlawful means, prevent, hinder, or delay any person having a lawful right to register, or to be registered, from duly exercising such right; or who shall knowingly, willfully, or fraudulently compel or induce, or attempt, or offer to compel or induce, by such means, or any unlawful means, any supervisor of registration, or other officer of registration, to register any person not lawfully entitled to registration in such precinct, or to register any false, assumed, or fictitious name, or any name of any person, except as provided in this act; or shall knowingly, or willfully, or fraudulently **interfere with,** hinder, or delay any supervisor of **registration,** or other officer of registration, in the discharge of his duties, or counsel, advise, or induce, or attempt to induce any such supervisor, or other officer to refuse, or neglect to comply with, or to perform his duties, or to violate any law prescribing or regulating the same, or shall aid, counsel, procure, or advise any voter, person, supervisor, or other officer of registration, to do any act forbidden by this act, or in this act constituted an offense, or to omit to do any act by law directed to be done, every such person shall, upon conviction thereof, be adjudged guilty of a **felony,** and shall be punished by imprisonment in a state prison not less than one nor more than five years.

1732. If any **supervisor** of registration, or revision of registration, shall be guilty of any willful **neglect** of his **duty,** under this act, or of any corrupt or fraudulent conduct or practice in the execution of the same, he shall, on conviction thereof, be adjudged guilty of a misdemeanor, and shall, on conviction thereof, be punished by imprisonment in the county jail for not less than ten days nor more than sixty days, or by fine of not less than one hundred ($100) dollars nor more than two hundred ($200) dollars, or both.

1733. Every supervisor of registration, clerk, or other **officer**, having the custody of any records, registers, or copy thereof, oaths, certificates, or any paper, document or evidence of any description in this act directed to be made, filed, or preserved, who is guilty of **stealing**, willfully destroying, mutilating, **defacing**, falsifying, or fraudulently removing or secreting the whole or any part thereof, or who shall fraudulently make an entry, erasure, or alteration therein, except as allowed and directed by the provisions of this act, or who permits any other person so to do, shall, upon the conviction thereof, be adjudged **guilty** of a misdemeanor and shall, be punished for each and every such offense by imprisonment in the county jail for not less than ten days nor more than sixty days, and shall, in addition thereto, forfeit his office.

1734. **Every person** not an officer, such as is mentioned in the last preceding section, who is **guilty** of any of the acts specified in the preceding section, or who advises, procures, or abets the commission of the same, or any of them, shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and for each and every such offense shall, on conviction thereof, be punished by imprisonment in the county jail for not less than ten days nor more than sixty, or by fine of not less than fifty dollars nor more than five hundred dollars, or both.

1735. Any person who shall be convicted of willful or corrupt **false swearing** or affirming in taking an oath or affirmation prescribed by, or upon any examination provided for in this act, or upon being challenged as unqualified upon offering to register, shall be adjudged guilty of willful and corrupt perjury, and shall, upon conviction thereof, be punished by imprisonment in the penitentiary, not less than one year, nor more than ten years.

1736. Every person who shall willfully and corruptly instigate, advise, induce, or procure any person to swear or affirm falsely, as aforesaid, or attempt or offer so to do, shall be adjudged guilty of **subornation of perjury**, and shall, upon conviction thereof, suffer the punishment directed by law in cases of willful and corrupt perjury.

1737. If at any general registration of voters, or revision thereof, any person shall cause any breach of the peace, or use any disorderly violence, or **threats of violence**, whereby any such registration or revision shall be impeded or hindered, or whereby the lawful proceedings of any supervisor of registration or challenger are interfered with, every such person shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than ten days nor more than six months, or by a fine of not less than fifty ($50) dollars nor more than five hundred ($500) dollars, or both.

1738. If any **person** shall knowingly or willfully **obstruct**, hinder, assault, or by bribery, solicitation, or otherwise interfere with any **supervisor** of registration, or other person designated, as provided in this act, to be present at any registration, in the performance of any duty required of him, or which he may by law be authorized and permitted to perform; or if any person, by any of the means before mentioned, or otherwise unlawfully, shall on the day of registration, or revision of registion, hinder or prevent any supervisor of registration, or any person designated as provided in this act to be present at such registration, in his free attendance and presence at the place of registration in and for which he is appointed or designated to serve, or in his full and free access and egress to and from any such place of registration or revision of registration, or to and from any room in which any such registration or revision of registration may be had, or shall unlawfully molest, interfere with, remove, or eject from any such place of registration or revision of registration any such supervisor of registration or person designated, as provided in this act, or shall unlawfully threaten or attempt or offer so to do, every such person shall be **guilty** of a misdemeanor, and on conviction thereof shall be punished by imprisonment in a county jail for not less than thirty days nor more than six months, or shall be fined not less than two hundred ($200) dollars nor more than one thousand ($1,000) dollars, or both, and shall stand committed until the fine and costs are paid.

1739. Any **supervisor** of registration who shall willfully **neglect,** or when called upon shall willfully decline to exercise the powers conferred on him in this act shall be deemed **guilty** of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not less than thirty days nor more than six months, or by a fine of not less than two hundred and fifty ($250) dollars, nor more than one thousand ($1,000) dollars, or by both fine and imprisonment.

1740. If in any election precinct at any general registration of voters, or revision thereof, in any city governed by the provisions of this act, any **supervisor** of registration shall knowingly or **willfully admit** any person to registration, or make any entry upon any register of voters, or shall consent thereto, unless a majority of all supervisors of registration in said election precinct are present and concur, he shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than thirty nor more than sixty days, or be fined not less than one hundred ($100) dollars nor more than one thousand ($1,000) dollars, or by both such fine and imprisonment. And if any **supervisor** of registration in any election district shall, without urgent necessity, **absent** himself from the place of registration in said precinct upon any day of registration, whereby less than a majority of all the supervisors in such election precinct shall be present during the hours of registration or revision of registration, he shall, upon conviction thereof, be adjudged **guilty** of a misdemeanor and shall be punished by imprisonment in a county jail not less than thirty days nor more than six months, or shall be fined not less than one hundred ($100) dollars nor more than one thousand ($1,000) dollars, or both.

1741. It is hereby made the special **duty of** the **county attorney** of any county in this state to immediately prosecute all complaints which may be made of violations of any of the provisions of this act to final judgment; and the court before which any conviction for such violation shall be had shall not in any case suspend sentence or judgment for more than twenty days; but no indictment or information for such violation shall be brought to trial unless the complainant, if any, if he shall be found, shall have at least two days' notice, in writing, from the said county attorney, of the day when he intends to try the same.

1742. Whoever during the sitting of any board of supervisors of registration in any election precinct in any city governed by the provisions of this act, whether held for the purpose of registration, or revision of registration, shall bring, take, order, or send into, or shall cause to be taken, brought, ordered, or sent into, or shall attempt to bring, take, or send into any place of registration, or revision of registration, any intoxicating **liquors** whatever, or shall at any such time or place drink or partake of any such liquor shall be deemed and held guilty of a misdemeanor, and shall, on conviction thereof, be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by a fine of not less than one hundred ($100) dollars nor more than five hundred ($500) dollars, or both, and shall stand committed until the fine and costs are paid.

1743. **Irregularities** or defects in the mode of noticing, convening, holding or conducting any registration, or revision of registration, authorized by law, shall constitute no defense to a prosecution for the violation of the provisions of this act.

1744. The **boundaries** of all election precincts and the **location** of all places **of registration,** or revision of registration, shall be publicly **advertised** in at least one newspaper published and of general circulation in said city in the last issue of the paper selected preceding the first day of any general registration, or revision of registration, and one notice in the last issue of the paper so selected prior to each day of registration, or revision of registration, and on such day or days only. All advertising provided for in this section shall be done in one newspaper only published in the city, to be designated by the city council; and all matters advertised shall be prepared and furnished the journals in which it is to be inserted free from unnecessary verbiage or repetition; *Provided*, The boundaries of all election precincts, and the location of all places of registration, or revision of registration, shall be publicly advertised in at least two newspapers published and of general circulation in said city, in the last issue of each of the papers selected preceding the first day of any general registration, or revision of registration, and one notice in the last issue of each of the papers so selected prior to each day of registration, or revision of registration, and on such days only.

1745. The legal compensation of all supervisors of registration, the **costs** and **expenses** of all necessary notices, posters, maps, advertisements, registers and books, blanks and stationery, the rent and cost of fitting up, warming, lighting, cleaning, and safe keeping of all places of registration, or revision of registration, and of all supplies of all kinds and nature for all registration in such city shall be a charge, and shall, upon proper certificates and vouchers, be paid out of the general fund of such city, in the same manner as by law provided for the payment of other city expenses out of such fund.

Secs. 1746 to 1776. "An act to promote the independence of voters at public elections, to enforce the secrecy of the ballot, and to provide for the printing and distribution of ballots at public expense." 1891, p. 238. In force March 4.

1746. All **ballots** cast in elections for public officers within this state shall be printed and distributed at public expense as hereinafter provided. The **printing** of ballots and cards of instruction for the electors in each county, and the **delivery** of the same to the election officers as hereinafter provided, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses; but the **expense** of printing and delivering the ballots and cards of instruction to be used in municipal elections shall be a charge upon the city or village in which such municipal election shall be held.

1747. **Nomination of Candidates.**—Any convention, or primary meeting, as hereinafter defined, held for the purpose of making nominations to public office, and also voters to the number hereinafter specified, may nominate candidates for public office to be filled by election within the state. A convention or primary meeting within the meaning of this act is an organized assemblage of voters or delegates representing a political party which, at the last election before the holding of such convention or primary meeting, polled at least one per centum of the entire vote cast in the state, county, or other division or district for which the nomination is made. A committee appointed by any such convention or primary meeting may also make nominations to public office, when authorized to do so by resolution duly passed by the convention or meeting at which such committee was appointed.

1748. All **nominations** made by such convention, committee, or primary meeting shall be certified as follows: the **certificate** of nomination, which shall be in writing, shall contain the name of the office for which each person is nominated, the name and residence of each person, and, if in a city, the street, number of residence, and of place of business, if any, and shall designate, in not more than five words, the party or principle which such convention, committee, or primary meeting represents. It shall be signed by the presiding officer and secretary of such convention, committee, or primary meeting, who shall add to their signatures their respective places of residence, and make oath before an officer, qualified to administer the same, that the affiants were such officers of such convention, committee, or primary meeting, and that said certificates and the statements therein contained are true to the best of their knowledge and belief. A certificate that such oath has been administered shall be made and signed by the officer before whom the same was taken, and attached to such certificate of nomination. When the nomination is made by a committee, the certificate of nomination shall also contain a copy of the resolution passed at the convention or primary meeting which authorized the committee to make such nomination.

1749. **Certificates** of nomination of candidates for offices to be filled by the voters of the entire state, or any division or district greater than a county, including candidates for congress, shall be **filed** with the secretary of state, except as in this section otherwise provided. Certificates of nomination for all county, township, and precinct offices, including members of both branches of the legislature, shall be filed with the county clerk of the respective counties wherein the officers are to be elected, and in case the legistative district from which such candidate is to be elected embraces more than one county, then, and in that case, the certificates shall be filed with the county clerk of each county included in such district. Certificates of nomination for judges of the district court shall be filed with the county clerk of each county embraced in such judicial district. Certificates of nomination for municipal officers shall be filed with the clerks of the respective municipal corporations wherein the officers are to be elected.

1750. **Candidates** for public office may be **nominated otherwise** than by convention, committee, or primary meeting, in the manner following: A **certificate** of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in section three (3) of this act [1748], shall be **signed by electors** residing within the district or political division in and for which the officer or officers are to be elected, in the following numbers: The number of signatures shall not be less than five hundred (500) when the nomination is for an office to be filled by the electors of the entire state, and need not exceed fifty (50) when the election is for an office to be filled by the electors of a city, county, district, or other division less than the state, and need not exceed twenty (20) when the nomination is for an office to be filled by the electors of a township, precinct, or ward; *Provided*, That the number of signatures need not in any instance exceed one-fourth (¼) of the total number of voters when the nomination is for an office to be filled by the electors of a county, township, precinct, village, or ward, and that the said signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence, his business, and his business address. Such certificate may be filed as provided for in section four (4) of this act, in the same manner and with the same effect as a certificate of nomination made by a party convention, committee, or primary meeting. Women qualified to vote for any public officer may sign nomination papers for candidates for such office.

1751. No **certificate** of nomination shall contain the **names** of more candidates for any office than there are persons to be elected to such office. No person shall sign more than one certificate of nomination for any office.

1752. The secretary of state shall cause to be preserved in his office for the period of two (2) years all **certificates** of nomination filed therein under the provisions of this act; and each county and municipal clerk shall cause to be **preserved** in his office for the period of two (2) years all certificates of nomination filed therein under the provisions of this act. All such certificates shall be open to public inspection.

1753. When nominations are made by a convention, committee, or primary meeting, as provided for in section three (3) of this act, the **certificates** of nomination to be **filed** with the secretary of state shall be filed not less than twenty-five (25) days before the day fixed by law for the election of the persons in nomination; and the certificates of nomination herein directed to be filed with a county clerk shall be filed not less than twenty (20) days before election, and the certificates of nomination herein directed to be filed with a municipal clerk shall be filed not less than fifteen (15) days before election. Certificates of nomination otherwise than by a convention, committee, or primary meeting, made according to the provisions of section five (5) of this act [1750], shall, when required to be filed with the secretary of state, be filed not less than fifteen (15) days before election; and when required to be filed with the county clerk, shall be filed not less than twelve (12) days before election; and when required to be filed with a municipal clerk, shall be filed not less than ten (10) days before election.

1754. The **secretary of state** shall, immediately upon the expiration of the time within which certificates of nomination may be filed with him, **certify** to the county clerk of each county, within which any of the voters may by law vote for a candidate or candidates named in the certificate, the name and description of each of such candidates, together with the other details mentioned in the certificate of nomination so filed with the secretary of state, and also any proposed constitutional amendment, or other question to be submitted to the people of the state for popular vote.

1755. Whenever any person nominated for public office, as in this act provided, shall, at least twelve (12) days before the day of election, if he shall have been nominated as provided in section three (3) of this act, or at least ten (10) days before the day of election if he shall have been nominated as provided in section five (5) of this act [1750], notify the officer with whom the original certificate of his **nomination** was filed, in a writing signed by him and duly acknowledged, that he declines such nomination, the same shall be void, and his name shall not be printed upon the ballots. The officer to whom such notification is given shall forthwith inform, by mail or otherwise, one or more persons whose names are attached to the original certificates of nomination that such nomination has been **declined.**

1756. All **certificates** of nomination which are in apparent conformity with the provisions of this act shall be deemed to be valid, unless **objection** thereto shall be duly made in writing within three (3) days after the filing of the same. In case such objection is made, notice thereof shall forthwith be mailed to all candidates who may be affected thereby, addressed to them at their respective places of residence, as given in the certificate of nomination. The officer with whom the original certificate was filed shall in the first instance pass upon the validity of such objection, and his decision shall be final unless an order shall be made in the matter by a county court, or by a judge of the district court, or by a justice of the supreme court at chambers, on or before the Wednesday preceding the election. Such order may be made summarily upon application of any party interested, and upon such notice as the court or judge may require.

1757. Should any person so nominated die before election day, or decline the **nomination,** as in this act provided, or should any certificate of nomination be insufficient or inoperative, the **vacancy** or vacancies thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed and sworn to in the manner prescribed for the original certificate of nomination, and shall, upon being filed at least eight (8) days before election, have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the secretary of state, he shall, in certifying the nominations to the various county clerks, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee; and in the event that he has already sent forward his certificate, he shall forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, together with the other details mentioned in the certificate of nomination so filed with the secretary of state, and the name of the person for whom such nominee is substituted.

1758. Except as in this act otherwise provided, it shall be the duty of the **county clerk** of each county to **provide printed ballots** for every election for public officers in which electors, or any of the electors within the county, participate, and to cause to be printed in the ballot the name of every candidate whose name has been certified to, or filed with the county clerk in the manner provided for in this act. But in municipal elections the city or village clerk shall provide printed ballots. Ballots other than the official white ballot printed by the respective county or municipal clerks, according to the provisions of this act, shall not be cast or counted in any election. Nothing in this act contained shall prevent any voter from writing on his ballot the name of any person for whom he desires to vote, for any office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter, and any voter may take with him into the polling place any printed or written memorandum or paper to assist him in making or preparing his ballot, except as hereinafter otherwise provided. Elections for **school** district **officers**, except for members of the boards of education in cities, are excepted from the provisions of this act.

1759. All **official ballots** prepared under the provisions of this act shall be white in color and of a good quality of news printing paper, and the names shall be printed thereon in black ink. Every ballot shall contain the name of every candidate whose nomination for any office specified in the ballot has been certified or filed according to the provisions of this act, and no other names. The names of candidates for each office shall be arranged under the designation of the office in alphabetical order according to surnames, except that the names of electors of president and vice president of the United States presented in one certificate of nominations shall be arranged in a separate group. Every ballot shall also contain the name of the party or principle which the candidates represent, as contained in the certificates of nomination. At the end of the list of candidates for each office shall be left a blank space large enough to contain as many written names of candidates as there are offices to be filled. There shall be a margin on each side at least half an inch wide, and a reasonable space between the names to be printed thereon, so that the voter may clearly indicate, in the way hereinafter provided, the candidate or candidates for whom he wishes to cast his ballot. Whenever the secretary of state has duly certified to the county clerk any question to be submitted to a vote of the people, the county clerk shall have printed on the regular ballots the question in such form as will enable the electors to vote upon the question so presented in the manner hereinafter provided. The county clerk shall also prepare the necessary ballots whenever any question is required by law to be submitted to the vote of the electors of any locality, and not to the state generally. *Provided, however,* That in all questions submitted to the voters of a municipal corporation alone, it shall be the duty of the municipal clerk to provide the necessary ballots. Sample ballots, printed upon red or green paper, but in the form of those to be used on election day, each containing the names of the candidates and all questions submitted to a popular vote which are to be printed upon the appropriate official ballot, shall be printed and in possession of the county or municipal clerk six days before the day of election, subject to public inspection. The official ballots shall be printed and in possession of the county or municipal clerks at least four days before election, and subject also to inspection by the candidates and their agents. At the top of official ballots shall be printed the words "official ballot," and at the top of sample ballots shall be printed the words "sample ballot." Any elector of any election precinct or district, or municipality may obtain from the county or municipal clerk not to exceed three sample ballots on or before the day of election. No person other than the county or municipal clerk shall print or cause to be printed any ballot or ballots marked "official ballot," nor shall any person except said clerk print or cause to be printed any ballot or ballots upon white paper.

1760. The county or municipal clerk, charged by this act with the duty of printing and providing ballots, shall provide for each election precinct or district in the county or municipality two hundred ballots of each kind for every fifty (50), or fraction of fifty (50), voters registered at the last preceding election in the district. If there is no registry in the precinct, district, or municipality, such ballot shall be provided to the number of two hundred (200) of each kind for every fifty (50), or fraction of fifty (50), voters who voted at the last general election in the district. When a precinct or district shall be divided or the boundaries changed the clerk must ascertain, as nearly as possible, the number of voters in the new district or districts, and provide therefor a sufficient number of ballots in the above proportion.

1761. Whenever it shall appear by affidavit that an error or omission has occurred in the names or description of the candidates nominated for office, or in the printing of the sample or official ballots, the county judge or a judge of the district court sitting at chambers may, upon application of any voter, by order require the clerk charged with the duty in respect to which such error or omission had occurred, to correct such error, or to show cause why such error should no be corrected. The clerk shall, also, upon his own motion, correct without delay any patent error in the ballots which he may discover, or which shall be brought to his attention, and which can be corrected without interfering with the timely distribution of the ballots as hereinafter provided.

1762. Before the opening of the polls, the county clerk of the county, or the municipal clerk in the case of municipal elections, shall cause to be delivered to the judges of election of each election precinct which is within the county (or within the municipality in case of municipal elections) and in which the election is to be held, at the polling place of the precinct, the proper number of ballots as provided for in section fifteen of this act. The ballots for each precinct or district shall be inclosed in a sealed packet marked with the proper designation of the precinct or district, and at the opening of the polls the package of ballots shall be publicly broken by one of the judges of election. If from any cause the official ballots prepared by the county or municipal clerk, as herein prescribed, shall not be ready for **distribution** at any polling place, or if the supply of ballots shall be exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in the form of the official ballots, may be used.

1763. All officers, upon whom is imposed by law the duty of designating the **polling places**, shall provide in each polling place designated by them a sufficient number of places, **booths**, or compartments, which shall be furnished with such supplies and conveniences as shall enable the voter conveniently to prepare his ballot for voting, and in which electors may mark their ballots screened from observation, and a **guard rail** so constructed that only persons within such rail can approach within twelve feet of the ballot-boxes, or the places, booths, or compartments herein provided for; *Provided, however*, That in country polling places where a sufficiently large room cannot be obtained the guard rail may be placed within six (6) feet of the ballot-box and booths. The number of such places, booths, or compartments shall not be less than one for every fifty voters or fraction thereof registered in the district or precinct, and where there has been no registration of voters, the number of such places, booths, or compartments shall not be less than one for every fifty electors voting in the precinct at the last general election. No person other than electors engaged in receiving, preparing, or depositing their ballots, the judges and clerks of election, and one qualified elector of the voting precinct from each of the political parties for the purpose of challenging illegal votes, shall be permitted to be within said rail. The expense of providing such places or compartments and guard rails shall be a public charge, and shall be provided for in the same manner as the other election expenses. The officers now charged by law with the division or alteration of **election districts** or precincts, shall, as far as necessary, alter or divide the existing election districts or precincts in such manner that each election district or precinct shall not contain more than three hundred voters.

1764. At any election the judges of election shall designate two of said **judges** whose duty it shall be to **deliver ballots** to the qualified electors. At the same time and in the same manner as judges of election are now elected or appointed, two **additional judges** of election for each election district or precinct in cities where a registration of voters is required shall be elected or appointed. The said additional judges of election shall be paid in the same manner and at the same rate as judges of election are now paid.

1765. **[Voting—Procedure.]**—When any duly qualified elector shall present himself at the polling place of his election district or precinct, for the purpose of voting at any election then in progress, he shall receive from a member of the election board a ballot upon the back of which two members of the board shall first write their names in ink; the elector shall then forthwith proceed alone into a compartment, if one be then unoccupied, and shall prepare his ballot by marking in the appropriate margin or place a cross (X) with ink opposite the name of the candidate of his choice for each office to be filled, or by filling in with ink the name of the candidate of his choice in the blank space provided therefor, and marking a cross (X) with ink opposite thereto; and in case of a question submitted to the vote of the people, by marking in the appropriate margin or place a cross (X) with ink against the answer he desires to give; he shall then fold the ballot so as to conceal the names and the marks thereon, and to expose the names of the members of the election board upon the back thereof, and shall, without delay, and without exposing the names or marks upon the front or face thereof, and without first leaving the inclosure in which the compartments are placed, deliver the ballot so folded to the judge of election, who shall, without exposing the names or marks upon the front or face thereof, verify the signatures upon the back thereof, and deposit the ballot in the ballot-box in the presence of the elector, and the elector shall forthwith leave the railed inclosure. No elector shall be allowed to occupy a voting compartment already occupied by another, nor to remain within the railed inclosure in which the compartments are situate more than ten minutes, nor to occupy a voting compartment for more than five minutes. In cities where the registration of electors now is, or hereafter may be, required by law, no person shall receive a ballot unless his name duly appears upon the registry list of the election district, or he shall establish in the manner provided by law, his right to vote; when such person receives a ballot a check shall be placed opposite his name upon the registry list, and when he votes his name shall be again checked upon such list. Every elector receiving a ballot shall vote before leaving the polling room, or if he does not wish then to vote, he shall, before leaving the polling room, return the ballot so received to a member of the election board. No person receiving a ballot shall, under any pretext whatever, take the same from the polling room, and any person taking a ballot from the polling room shall forfeit and lose his right to vote at the election, and shall be imprisoned in the county jail not less than thirty (30) days nor more than six (6) months.

1766. Any voter who shall by accident or mistake spoil his ballot may, on returning said spoiled ballot, receive another in place thereof; *Provided*, He shall not receive to exceed four (4) in all. The judges of election shall cause the unused and **spoiled ballots** to be made up in a sealed packet, and shall endorse the same with the words "unused and spoiled ballots," with the proper designation of the election district, and shall sign such endorsement and shall return such packet to the clerk of their respective county or municipality, with a statement made up by the members of the election board of the district, showing the number of ballots received for such district and accounting for them as follows: *First*—Number counted in ballot box. *Second*—Number unused and returned.

1767. Any **voter** who delares to the judges of election that he cannot read, or that by blindness or other physical **disability** he is unable to mark his ballot, shall, upon request, receive the **assistance of** one (1) or two (2) of the election **officers** in the marking thereof, and such officer or officers shall certify on the outside thereof that it was so marked with his or their assistance, and shall thereafter give no information regarding the same. The judges shall require such declaration of disability to be made by the voter under oath before them, and they are hereby qualified to administer the same. No elector, other than one who may because of his inability to read or physical disability be unable to mark his ballot, shall divulge to any one within the polling place the name of any candidate for whom he intends to vote, or to ask or receive the assistance of any person within the polling place in the preparation of his ballot.

1768. No judge of election shall deposit in any ballot-box any **ballot** unless the same is **identified** by the signature of two (2) judges of election as hereinbefore provided. Every person violating the provisions of this section shall, upon conviction thereof, be fined not less than ten (10) dollars nor more than one hundred (100) dollars.

1769. The county clerk of each county shall cause to be **printed**, in large type on cards in English, **instructions** for the guidance of electors in preparing their ballots. He shall furnish six (6) such cards to the judges of election in each election precinct, and one additional card for each fifty registered electors or fractional part thereof in the precinct, at the same time and in the same manner as the printed ballots. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three (3) of such cards elsewhere in and about the polling places upon the day of election. Said cards shall be printed in large, clear type, and shall contain full instructions to the voters, according to schedule "B" of this act.

1770. In the **canvass** of the votes any ballot which is not endorsed as provided in this act by the signatures of two (2) judges upon the back thereof, shall be void, and shall not be counted, and any **ballot** or parts of a ballot from which it is impossible to determine the elector's choice shall be void and shall **not** be **counted**; *Provided*, That when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, that it shall be the duty of the judges of election to count such part.

1771. No person shall falsely make, or make oath to, or fraudulently deface or fraudulently destroy any **certificate** of nomination or any part thereof; or file, or receive for filing, any certificate of nomination, knowing the same or any part thereof to be falsely made; or suppress any certificate of nomination which has been duly filed, or any part thereof, or forge or falsely make the official endorsement on any **ballot.** Every person violating any of the provisions of this section shall be deemed guilty of a **felony**, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

1772. **No person shall**, during the election, **remove** or destroy any of the **supplies** or other conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot. No person shall, during an election, tear down or **deface** the **cards** printed for the instruction of voters. Every person willfully violating any of the provisions of this section, shall, upon conviction thereof in any court of competent jurisdiction, be fined in any sum not less than ten dollars nor more than one hundred dollars.

1773. Every public **officer** upon whom any duty is imposed by this act, who shall willfully do or perform any act or thing herein prohibited, or neglect or omit to perform any duty as imposed upon him by the provisions of this act, shall, upon **conviction** thereof, forfeit his office, and shall be punished by imprisonment in the county jail for a term of not less than one month nor more than six months, or by a fine of not less than one hundred dollars and not more than five hundred dollars, or by both such fine and imprisonment.

1774. No officer of election shall do any **electioneering** on election day. No person whomsoever shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within one hundred feet thereof, nor obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officers is hereby authorized and empowered, and it is hereby made his duty to, clear the passage-ways and prevent such **obstruction**, and to arrest any person so doing. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his **ballot** after it is **marked** to any person in such a way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote, nor shall any person solicit the elector to show the same; nor shall any person except a judge of election receive from any elector a ballot prepared for voting. No elector shall, receive a ballot from any other person than one of the judges of election having charge of the ballots, nor shall any person other than such judges of election deliver a ballot to such elector. No elector shall vote or offer to vote any ballot except such as he has **received** from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Every elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots shall, before leaving the polling place, return such ballot to such judges. Whoever shall violate any of the provisions of this section, shall, upon conviction thereof in any court of competent jurisdiction, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and adjudged to pay the cost of prosecution.

1775. It shall be the duty of the secretary of state to cause to be published in pamphlet, form and **distribute** through the county clerks of the respective counties, a sufficient number of **copies of** this **law**, together with the registration law of the state and such other laws as bear upon the subject of election, as will place a copy thereof in the hands of all officers of elections.

1776. The proper authorities of every city shall detail a police officer to each **polling place** of such city upon the day fixed for holding any election therein, and the special duties of such **police officer**, in addition to the preservation of the peace, shall be as follows: He shall, as far as possible, remain at, or near the entrance of the inclosure in which the compartments are placed: (*a*) He shall not permit any person to enter said inclosure unless duly provided with an official ballot, signed with the names of two members of the election board. (*b*) He shall not permit any person to enter the inclosure while the several compartments therein are occupied. (*c*) He shall not permit any person to leave the inclosure without first voting or surrendering his ballot to a member of the election board. (*d*) He shall not permit any person to leave the polling room after receiving a ballot, without first voting or surrendering his ballot.

SCHEDULE A.

GENERAL FORM OF BALLOT TO BE USED AT STATE, CITY, AND TOWN ELECTIONS.

Official Ballot.

FOR GOVERNOR.	VOTE FOR ONE.	
Charles Cook, of Plattsmouth	Independent	
William Earle, of Grand Island	Republican	
John Watterman, of McCook	Democrat	

FOR LIEUTENANT GOVERNOR.	VOTE FOR ONE.	
Amos Beard, of Omaha	Democrat	
William Cutting, of David City	Independent	
Charles Ladd, of Aurora	Republican	

FOR SECRETARY OF STATE.	VOTE FOR ONE.	
Henry Barber, of Lincoln	Republican	
Allen Murphy, of Seward	Democrat	
Amos Stone, of North Platte	Independent	

For Auditor of Accounts.	Vote for ONE.	
William Ames, of Valley	Democrat	
Henry Brackett, of Beatrice	Independent	
John Kilburn, of York	Republican	

For Attorney General.	Vote for ONE.	
John Doe, of Wahoo	Independent	
Frank Gillan, of Rushville	Democrat	
Thomas Morris, of Central City	Republican	

For Commissioner Public Lands and Buildings.	Vote for ONE.	
Edward Evans, of Tecumseh	Republican	
David Hines, of Ponca	Independent	
William Smith, of Fremont	Democrat	

For Superintendent of Public Instruction.	Vote for ONE.	
Frank Bell, of Nelson	Independent	
A. J. Bowle, of Alma	Republican	
John Young, of Wilber	Democrat	

For County Commissioner.	Vote for ONE.	
Oscar Barber, of Hebron	Democrat	
William Morgan, of Ord	Republican	
Chas. Rathman, of Red Cloud	Independent	

For Senator Third District.	Vote for ONE.	
Peter Cooper, of Columbus	Republican	
Charles Russell Lowell, of Plum Creek	Independent	
Oscar Wilde, of Stanton	Democrat	

For Representative First District.	Vote for ONE.	
John Brown, of St. Paul	Independent	
Oliver Wendell Holmes, of Brewster	Democrat	
William Miller, of Nebraska City	Republican	
John Start, of Pappillion	Republican	
Frederick Stone, of Falls City	Independent	
Henry Waterman, of Grant	Democrat	

QUESTIONS SUBMITTED TO THE VOTE OF THE PEOPLE.

Shall license be granted for the sale of intoxicating liquors in this city?	YES	
	NO	

SCHEDULE B.

FORMS OF CARDS OF INSTRUCTIONS FOR THE GUIDANCE OF VOTERS.

Instructions to Voters.

1. Persons desiring to vote must procure their ballots from a member of the election board.

2. They must then, without leaving the polling place, proceed to a compartment and prepare their ballots.

3. The ballots are prepared as follows:

Make a cross mark (X) with ink in the right margin of the ballot opposite the name of each person for whom you wish to vote;

Be careful that you do not mark the names of persons for whom you do not wish to vote;

Do not make any mark on the ballot, save as above directed, or the ballot will not be counted;

If you spoil a ballot return it to a member of the election board, and obtain from him a new ballot, you cannot get more than four in all, take this to a compartment and mark it properly.

4. Having marked the ballot, fold it so as to conceal the names and marks on the face, and to expose the names on the back.

5. Take it to the judge of the election before leaving the inclosure, and see it deposited in the box.

6. Immediately leave the railed enclosure.

7. If you wish to vote for any person whose name does not appear upon the ballot, write or insert his full name in the blank space on the ballot under the proper office you wish him to hold, and make a cross mark in the proper margin opposite the same.

8. Do not take any ballot from the polling place; you thereby forfeit the right to vote.

Said cards shall also contain sections twenty-six, twenty-seven, twenty-eight, and twenty-nine of this act [1781 to 1774].

Secs. 1777 and 1778. "An act to **prevent frauds at elections** and to provide punishment therefor." 1883, p. 227. In force June 1.

1777. When at any general or special election a **ballot** with a designated **heading** contains printed thereon, in place of another, a name not found on the regular ballot having such heading, such name shall be regarded by the judges as having been placed therein for the purpose of **fraud**, and the ballot shall not be counted for the name so found.

1778. That any **person causing** ballots to be printed with a designated heading containing a name or names not found on the regular ballot having such heading, or any person knowingly peddling or distributing any such ballot with intent to have such ballot voted at any such general or special election, shall be deemed **guilty** of a misdemeanor, and shall, on conviction thereof, for each offense, be fined in any sum not less than fifty nor more than two hundred dollars, and be imprisoned in the county jail not exceeding sixty days.

CHAPTER 16.—FIRE COMPANIES.

Secs. 1779 to 1781. "An act to exempt firemen from jury, militia, and road duty." 1867 (Ter.), p. 16. In force February 18.

1779. All **members** in good standing in any fire company, or hook and ladder company, in this state, and all persons who have been members of such company in good standing for five consecutive years in the state of Nebraska, shall be **exempt** from serving upon grand and petit juries of justice of the peace courts of this state, and from militia duty in time of peace, and from the assessment of any poll tax.

Amended 1871, p. 131; 1873, G. S., p. 390.

1780. **[Numbers limited—Fire company defined.]**—No fire company shall have upon its rolls at one time more than seventy-five persons, and no hook and ladder company shall have upon its rolls at any one time more than fifty members; and the foreman and secretary of every such company shall, on the first days of April and October in each year, file in the office of the clerk of the district court in and for the respective counties a certified copy of the rolls of their respective companies, so as to obtain for the members thereof the privilege of the exemption herein named; *Provided*, That no organization shall be deemed to be a *bona fide* fire, or hook and ladder company until it shall have procured for active service apparatus for the extinguishment or prevention of fires, in case of a fire company to the value of $1,500, and of a hook and ladder company to the value of $500.

Amended 1873, G. S., p. 390.

1781. **Members** in good standing are hereby **defined** to be those who keep their dues promptly paid up, and are present and render active service when called out for the legitimate purposes of their organization.

Sec. 1782. "An act to exempt from sale on execution property used and kept to extinguish fires." 1869, p. 17. In force January 22.

1782. That all **fire** engines, hose, hose carriages, ladders, buckets, and all vehicles, machinery, and **appliances** of every kind used or kept by incorporate cities, villages, or fire companies for the purpose of extinguishing fire be and the same is hereby **exempt from execution** and sale to satisfy any debt, judgment, or decree arising upon contract or otherwise; *Provided*, That the provisions of this act shall not affect any voluntary lien created by bill of sale, mortgage, or otherwise, on such property, by the proper owner; *Provided further*, That the provisions of this act shall not apply to, or in any way affect the remedy upon any contract now existing, or judgment rendered upon any contract in any court of this state.

CHAPTER 17.—FRAUDS.

FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO REAL ESTATE.

Secs. 1783 to 1807 originally formed secs. 60–84, ch. 45, R. S. 1866, entitled "Real Estate."

1783. Every **conveyance** of, or charge upon, any estate or interest in lands, or the rents and profits thereof, made or created with intent to defraud prior or subsequent purchasers for a valuable consideration, shall, as against such purchasers, be **void.**

Deed to *bona fide* purchasers for value without notice good. **6,** 100. Statute does not render a contract void but voidable. It does not require a party to ignore considerations of moral obligation, equity, and good faith by pleading it; and a creditor cannot do so. **11,** 223 (9 N. W., 52); **8,** 114. The statute will not enable one who has accepted a conveyance of land to escape paying for it simply because the contract of purchase rested in parol. **14,** 177 (15 N. W., 318).

1784. No such conveyance or charge shall be deemed fraudulent in favor of a **subsequent purchaser,** who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantor in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

1785. No estate or interest in land, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, or surrendered, or declared, unless by act or operation of law, or by a deed of **conveyance in writing,** subscribed by the party creating, granting, assigning, surrendering, or declaring the same.

Deed, if properly executed and delivered, is valid between the parties and persons having notice of it although not acknowledged or recorded. **12,** 155 (10 N. W., 545). A letter from a principal to his agent directing a sale of his land, is sufficient authority for the agent to sell. **14,** 291 (15 N. W., 234). Part payment of the purchase price of real estate is not such part performance as to take an oral contract of sale out of statute. **17,** 52 (22 N. W., 111). A parol notice of a surrender of a lease inadmissible. **7,** 74. A lease signed by agent is good. **17,** 124 (22 N. W., 346). Agreement between judgment creditor and debtor, that in case former purchased at judicial sale land on which his judgment was a lien, he would satisfy judgment therefrom, and restore surplus, if any, to debtor, is sufficient to create a trust. **29,** 324 (45 N. W., 634). See **1,** 52.

1786. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last **will** and testament, nor to prevent any **trust** from arising or being extinguished by implication or operation of law.

1787. Every **contract for** the **leasing,** for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made.

While a parol lease for two years is void, yet if the tenant enter into possession it is valid as a lease for one year **13,** 6 (12 N. W., 820). Agreement need only to be signed by the party to be charged by it. **12,** 552 (11 N. W., 732). An oral acceptance of the option to purchase in a properly executed lease is not within the statute. **25,** 517 (41 N. W., 360). Between parties agreement not within the statute of frauds. **8,** 389 (2 N. W., 729). See **20,** 662 (31 N. W., 370). **19,** (541 26 N. W., 248).

1788. Nothing in this chapter contained shall be construed to abridge the powers of the court of chancery to compel the **specific performance** of agreements in cases of part performance.

Contract must be clearly established and must unequivocally relate to the identical contract set up. **3,** 214. Courts will not decree specific performance for the conveyance of homestead right before settler has obtained a patent therefor. Such a contract is against public policy and courts will not enforce. **2,** 124. Courts will not at all times decree specific performance. **9,** 424 (2 N. W., 748).

FRAUDULENT CONVEYANCES AND CONTRACTS RELATIVE TO GOODS, CHATTELS, AND THINGS IN ACTION.

1789. All deeds of gift, all conveyance, and all **transfers** or assignments, verbal or written, of goods, chattels, or things in action, made **in trust** for the use of the person making the same, shall be **void as against** the **creditors,** existing or subsequent, of such person.

1790. In the following cases every **agreement** shall be **void unless** such agreement, or some note or memorandum thereof, be **in writing,** and subscribed by the party to be charged therewith: *First*—Every agreement that by its terms is not to be performed within one year from the making thereof. *Second*—Every special promise to answer for the debt, default, or misdoings of another person. *Third*—Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry. *Fourth*—Every special promise by an executor or administrator to answer damages out of his own estate.

Promise held void under second clause. **10,** 364 (6 N. W., 430). Assignment in blank of real estate contracts void. **29,** 129 (45 N. W., 269). Evidence showed a direct promise to pay for goods furnished another, given before delivery, the latter being made upon the faith of the promise, which was therefore an original undertaking. **27,** 667 (43 N. W., 420). Parol contract to pay a tenant for certain improvements placed on real estate, not void where there was nothing to prevent it being performed in less than a year. **24,** 133 (37 N. W., 939). Promise to pay the debt of another as a part of the consideration of property purchased need not be in writing. **12,** 69 (10 N. W., 538). Deed and other writings undelivered not sufficient memorandum to take a contract out of the statute. **24,** 87 (38 N. W., 22). When the leading object of a party promising to pay the debt of another is to promote his own interests, and not to become a guarantor, it will be valid though not in writing. **14,** 201 (15 N. W., 233). Promise of agent in possession of goods of insolvent, in satisfaction of principal's debt, to pay claim of another if he will not disturb him in such possession, not within the statute. **24,** 655 (39 N. W., 844). See **16,** 17 (19 N. W., 454); **18,** 567 (26 N. W., 360); **26,** 219 (41 N. W., 1006).

1791. Every **contract for** the **sale** of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be **void unless**—*First*—A note or memorandum of such contract be made in writing, and be subscribed by the party to be charged thereby; or, *Second*—Unless the buyer shall accept and receive part of such goods or the evidence, or some of them, of such things in action; or, *Third*—Unless the buyer shall, at the time, pay some part of the purchase money.

Object not to avoid sales but to provide specified proofs in order to enforce them. **9,** 180 (2 N. W., 372). The defense given by this section is personal and cannot be interposed by strangers to the agreement. **10,** 420 (6 N. W., 475).

1792. Whenever goods shall be sold at **public auction,** and the auctioneer shall, at the time of sale, enter in a sale book a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

1793. Every **sale** made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, by way of mortgage or security, or upon any condition whatever, **unless** the same be **accompanied by** an immediate **delivery,** and be followed by an actual and continued change of possession, of the things sold, mortgaged, or assigned, shall be presumed to be fraudulent and **void,** as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud unless it shall be made to appear on the part of the persons claiming under such sale or assignment that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

Mortgage of goods with possession and power of sale in the mortgagor void as against his creditors. **6,** 399. Chattel mortgage good between parties but void as to creditors and subsequent purchasers in good faith. **8,** 378. When fraud presumed. **20,** 171 (29 N. W., 292). Chattel mortgage is *prima facie* fraudulent. Burden of showing that it is not, is on mortgagee. **13,** 263 (13 N. W., 279). Sale void unless accompanied by delivery; presumed to be void. **6,** 219; **9,** 50 (2 N. W., 461). Retention of possession *prima facie* evidence of fraud. Burden of proving the sale fair and *bona fide* is on vendee. **11,** 118 (7 N. W., 535), and **14,** 393 (15 N. W., 734); **11,** 122 (7 N. W., 755); **25,** 8 (41 N. W., 123). Delivery of possession of goods sold not necessary to protect purchaser from creditors of seller if purchase made in good faith. Posession only *prima facie* fraud which is a question of fact. **6,** 333. Delivery sufficient when property is separated and counted, though left in charge of vendor, and on his farm, which had been leased to vendee. **27,** 421 (43 N. W., 254). A failing debtor may secure one creditor by mortgage and hold possession without violation of this section. **18,** 225 (24 N. W., 685). Question of fraud, how raised. **7,** 138. The question of fraud can be raised only by creditors and purchasers. Creditors cannot raise it without first obtaining a judgment or process of some sort against the property; and purchasers cannot without first establishing their own good faith. **13,** 77 (12 N. W., 926). The term "creditors" includes all persons who are creditors of the vendor at any time while the goods remain in his possession or under his control. **14,** 394 (15 N. W., 734). See **12,** 585 (12 N. W., 101).

1794. The term "**creditors,**" as used in the last section, shall be **construed** to include all persons who shall be creditors of the vendor or assignor at any time whilst such goods and chattels shall remain in his possession or under his control.

See **12,** 586 (12 N. W., 101).

1795. Nothing contained in **sections** ten and eleven [1392-3] shall be **construed** to apply to contracts of bottomry or *respondentia*, nor to assignments or hypothecations of vessels or goods at sea, or in foreign ports, or upon the waters of a navigable stream, if the assignee or mortgagee shall take possession of such vessels or goods as soon as may be after the arrival thereof.

1796. Every mortgage or conveyance intended to operate as a **mortgage of goods** and chattels hereafter made, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditor of the mortgagor, and as against subsequent purchasers and mortgagors in good faith, unless the mortgage, or a true copy thereof, shall be **filed** * in the office of the county clerk of the county where the mortgagor executing the same resides, or in case he is a non-resident of the state, then in the office of the clerk of the county where the property mortgaged may be at the time of executing such mortgage, and such clerk shall endorse on such instrument or copy the time of receiving the same, and shall keep the same in his office for the inspection of all persons; and such mortgage or instrument may be so filed, although not acknowledged, and shall be valid as if the same were fully spread at large upon the records of the county.

All after * added 1879, p. 107. Good between parties and those having notice, though unwritten. **22,** 115 (34 N. W., 111); **8,** 4. Good between parties though not filed, but void as to creditors and purchasers in good faith. **21,** 702 (33 N. W., 254). A trifling mistake in copy filed will not vitiate it. **16,** 461 (20 N. W., 632). When filed in county where mortgagor resides not necessary to file in county to which mortgagor removes. **20,** 555 (31 N. W., 367). When so filed it is a part of the record and a certified copy admissible in evidence. **25,** 360 (41 N. W., 192). When in form a bill of sale with defeasance clause, and executed *bona fide*, though unfiled, valid against subsequent mortgagees with actual notice. **29,** 209 (45 N. W., 624). Party purchasing property before mortgage is recorded is presumed to be a *bona fide* purchaser, and burden is on other party to show he is not. One purchasing from a *bona fide* purchaser is not liable for conversion. **12,** 51 (10 N. W., 535). Unless filed, void as to creditors and subsequent purchasers in good faith. **3,** 76. Description of property contained. **21,** 198 (31 N. W., 511). Legal presumptions are against the *bona fides* of mortgages where mortgagors remain in possession of the property with power of sale in the usual course of trade, yet they may be shown by competent evidence that they were made in good faith. **22,** 157 (34 N. W., 353). Law as it was in 1875 cited and construed. **11,** 496 (9 N. W., 640). Law of 1877 cited, and held that failure to index mortgage did not render it invalid. **11,** 501 (9 N. W., 654). Effect of senior mortgagee fraudulently releasing a part of the property. **11,** 504 (9 N. W., 654). See **2,** 252; **3,** 137; **13,** 263 (13 N. W., 279); **20,** 389 (30 N. W., 269); **24,** 63 (37 N. W., 688).

1797. Such **clerk** shall also **enter** in a **book** to be provided by him for that purpose the names of all the parties to such instrument, arranging the names of such mortgagors alphabetically, and shall note thereon the time of filing such instrument or copy. Such mortgage when satisfied shall be discharged by an entry by the mortgagee, his agent or assignee, on the margin of such **index,** which shall be attested by the clerk without fee; *Provided, also*, That the county clerk may discharge a mortgage on the presentation or receipt of an order in writing, signed by the mortgagee thereof and attested by a justice of the peace or some officer with a seal. Any mortgagee, assignee, or their legal personal representatives, after full performance of the conditions of the mortgage, who for the space of ten (10) days after being requested shall refuse or **neglect to discharge** the same as provided in this section, shall be liable to the mortgagor, his heirs or assigns, in the sum of fifty (50) dollars damages; and also for all actual damages sustained by the mortgagor, occasioned by such neglect or refusal, said damages to be recovered in the proper action.

Amended 1879, p. 108; 1885, p. 260. Tender of amount due on note secured by chattel mortgage divests lien thereof. **24,** 634 (39 N. W., 786). Mortgagee cannot withdraw original from files and foreclose. **24,** 596 (39 N. W., 615).

1798. Every such mortgage shall **cease to be valid** as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of **five years** from the filing of the same copy thereof. Every such clerk shall be entitled to receive the following fees for services under the provisions of this chapter: For filing such instrument or copy thereof, ten (10) cents; for entering the same in a book, ten (10) cents; and for certified copies of such instruments so filed as aforesaid, for every one hundred words, ten (10) cents.

Rewritten 1879, p. 108.

1799. Every **conveyance** or assignment, in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, made with the intent **to hinder,** delay or defraud **creditors** or persons of their lawful rights, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, suit commenced, or decree or judgment suffered, with the like intent as against the person so hindered, delayed, or defrauded shall be void.

"As against the person so hindered, delayed, and defrauded," excludes volunteers and those who have no interest in the subject-matter. **28,** 581 (44 N. W., 732). Preference of *bona fide* creditor not fraudulent. **24,** 375 (38 N. W., 793). Mortgage is fraudulent when given by a failing debtor on all his goods to one creditor for a small debt, and to the prejudice of other creditors. **29,** 79 (45 N. W., 265); **29,** 111 (46 N. W., 922). Fraudulent transfer made by grantor and being carried into effect by his executor and grantee who is insolvent will be restrained by injunction pending action. **6,** 503. It must be clearly shown that purchaser was ignorant of the fraudulent intent and purpose of the vendor in order to set aside sale. **22,** 815 (36 N .W., 465.) Deed executed by one free from debt, but concealed and not recorded, will not be upheld as against subsequent creditors. Conveyance through another between husband and wife upheld to extent of actual consideration. **27,** 597 (43 N. W., 411). Creditors not entitled to increment of property fraudulently transferred. **27,** 264 (42 N. W., 1035). See **7,** 24; **27,** 522 (43 N. W., 356).

1800. Every **grant or assignment** of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, shall be void.

What constitutes fraudulent assignment. **7,** 433.

1801. Every **conveyance,** charge, instrument, or proceeding declared to be **void,** by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the **heirs,** successors, personal representatives, or assignees of such creditors or purchasers.

1802. The question of **fraudulent intent** in all cases arising under the provisions of this chapter shall be deemed a **question of fact,** and not of law, and no conveyance or charge shall be adjudged fraudulent, as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

See **4,** 171; **13,** 33 (12 N. W. 811).

1803. The provisions of this chapter shall not be construed in any manner to affect or impair the **title of** a **purchaser** for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Question of fraudulent intent one of fact, not law. **6,** 99.

1804. The term "**lands,**" as used in this chapter, shall be **construed** as coextensive in meaning with "lands, tenements, and hereditaments," and the terms "estate and interest in lands" shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands as above described.

1805. The term "**conveyance,**" as used in this chapter, shall be **construed** to embrace every instrument in writing (except a last will and testament), whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

See **14,** 291 (15 N. W., 234).

1806. The **consideration** of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

1807. Every instrument required by any of the provisions of this chapter to be subscribed by any party may be subscribed by his **agent,** thereunto authorized by writing.

Agent may make agreements relating to sale of land when so authorized in writing. **1,** 52.

Secs. 1808 and 1809. "An act to amend an act entitled 'An act to prevent the **fraudulent transfer** of property,' approved February 19, 1877." 1879, p. 102. In force, June 1.

1808. That no sale, **contract,** or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any purchaser or judgment creditor of the vendee or lessee in actual possession, obtained in pursuance of such sale, contract, or lease without notice, unless the same be in writing, **signed** by the vendee or lessee, and a copy thereof **filed** in the office of the clerk of the county, within which such vendee or lessee resides; said copy shall have attached thereto an affidavit of such vendor or lessor, or his agent or attorney, which shall set forth the names of the vendor and vendee or lessor and lessee, or description of the property transferred and the full and true interest of the vendor or lessor therein. All such sales and transfers shall cease to be valid against purchasers in good faith or judgment or attaching creditors without **notice** at the expiration of five years, unless such vendor or lessor shall, within thirty days, prior to the expiration of the five years from the date of such sale or transfer, file a copy thereof, verified as aforesaid, in the office of said clerk, and the said vendor or lessor may preserve the validity of his said sale or transfer of personal property by an annual refiling in the manner as aforesaid of such copy.

See **18,** 581 (26 N. W., 351); **28,** 175 (44 N. W., 106).

1809. The county **clerk,** on presentation, shall **file** such copy in his office, and **index** the same in the same manner as chattel mortgages are required to be indexed, and he shall receive therefor a fee of twenty-five cents. This act shall not be held to apply to chattel mortgages.

Sec. 1810. "An act to **prohibit** the **fraudulent transfer** of property and to declare the same a crime, and to prescribe the punishment thereof." 1883, p. 230. In force June 1.

1810. If any person or persons in this state, with intent to cheat or defraud his creditors or any of them, or with a fraudulent intent to hinder or delay his creditors or any of them in the collection of his or their demands, shall sell, transfer, secrete, incumber, or in any way **fraudulently dispose** of any of or all of his goods, wares, merchandise, chattels, bills receivable, choses in action, or property of any kind, or who, upon any sale of any goods, wares, merchandise, or property of any kind, with a fraudulent intent to hinder or delay or to cheat or defraud his creditors or any of them, shall secrete, assign, transfer, conceal, or in any way fraudulently dispose of all or any part of the proceeds of any such sale of any property, he or they shall be deemed **guilty** of a fraudulent transfer of property, and upon conviction thereof shall be punished in the same manner and to the same extent as if he had been convicted of the larceny of the same property.

"An act to prohibit the fraudulent transfer of property and to declare the same a crime and to prescribe the punishment thereof" held constitutional; the act having but one subject. 21, 53 (31 N. W., 258).

CHAPTER 18.—HIGHWAYS.

I. ROADS.

Secs. 1811 to 1917, except secs. 1812 to 1815 and sec. 1917. "An act to amend chapter 47 of the Revised Statutes of 1866, entitled 'Roads.'" 1879, p. 120. In force June 1. Superseding act of 1867 (state), p. 45; act of 1873, G. S., p. 959; acts of 1875, pp. 113 and 114.

1811. The **county board** has a general **supervision** over the public roads of the county, with power to establish and maintain them as herein provided, and to see that the laws in relation to them are carried into effect.

Secs. 1812 to 1815. "An act to authorize the county board of any county in which a city of the metropolitan or cities of the first class having over 25,000 inhabitants is situated, to grade, pave, or otherwise **improve roads** leading thereto, and to assist such cities in the improvement of such roads within the incorporate limits as are extensions of roads leading thereto." 1889, p. 78. In force March 30. (Repealing laws 1883, ch. 23, p. 183).

1812. The **county board** of any county in which any city of the metropolitan, or city of the first class having over twenty-five thousand inhabitants, is situated, is hereby authorized and empowered, whenever the road fund of said county will warrant it, to **aid in** the grading, **paving,** or otherwise improving of any street, avenue, or boulevard leading into such city and within the corporate limits thereof, by providing for payment of not exceeding one-half of the cost of such grading, and not exceeding the cost of the paving of intersections; and shall also be authorized and empowered to grade, pave, or otherwise improve any street, avenue, boulevard, or road, or any portion thereof leading into and adjacent to any such city, outside of the corporate limits thereof and within two miles from such corporate limits, including any portion thereof leading into or across any village or town and for such improvements outside of the corporate limits of any such city as hereinafter authorized and directed.

1813. Whenever the county board shall contemplate the making of such improvements outside of the corporate limits of any such city, they shall notify the county **surveyor,** whose duty it shall be to make an examination of the proposed improvement and report an **estimate** of the **cost** thereof to said board. If, upon the coming in of such report, the county board determine to make the improvement, they shall cause personal **notice** to be served on the owners of property abutting on said road, of their intention to make such improvement, and if the owner is a non-resident, then by personal service on the agent of such non-resident, if he have one residing in the county, and in case he has no such agent, by publishing such notice in a newspaper published in and of general circulation in said county, and upon the proof of service or publication of such notice aforesaid, and after giving such owner an opportunity to be heard, the board shall decide upon the material to be used in such improvement and enter an order upon their record for the construction thereof.

1814. Two-thirds of the **cost** of any improvement outside of the corporate limits of any city authorized by this act shall be paid by said board out of the road fund of said county, one-third by special **assessment** on all real estate abutting on or adjacent to such improvement to a depth not exceeding 500 feet on each side thereof, to the extent of the special benefits to such real estate by reason of such improvement; the benefits to such real estate to be determined by said board, after publication in a newspaper of general circulation in the county, of notice to the owners of said real estate at least ten days prior to such determination. Such assessment may be according to the front foot of the real estate along the line of such improvement or according to such rule as said board may adopt for the distribution and equalization of the said one-third of the said cost, and the amount so assessed shall be placed upon the tax list for the ensuing year and collected in the same manner and at the same time as the tax on other property, and, when collected, credited to the road fund of said county.

1815. All **contracts** for the construction of such improvements outside of the corporate limits of any such city shall be let to the **lowest** responsible **bidder**, who will enter into bonds for the faithful performance thereof, in such amount and with such securities as the county board may determine. All payments on such contract shall be made by warrants drawn on the road fund of said county.

Shall be let to the lowest responsible bidder. **4**, 165.

1816. All public roads shall have a **width** of sixty-six feet, and the staked line marking such road shall be on the northern edge of the said sixty-six feet, if the road is running east and west, and on the western edge, if the course of the road is north and south; *Provided*, That roads located on the state line, where any adjoining state locates similar roads, may have a width of thirty-three feet; *And provided further*, That whenever the county board shall deem it necessary, the width of such road, at any point where a bridge is to be located and constructed, may be one hundred and fifty feet for a distance not exceeding three hundred feet on either side, from the center of such bridge.

1817. **All roads** within this state which have been laid out in pursuance of any law of this state, or of the territory of Nebraska, and which have not been vacated in pursuance of law, are hereby declared to be **public** roads; *Provided*, That all roads that have not been used within five years shall be deemed vacated.

There must be a clear and entire abandonment to vacate a road, *non-user* of a part will not do. **16**, 246 (20 N. W., 299). Public may acquire road by *user*, and such right will not be lost by the *non-user* of a part thereof. **28**, 270 (44 N. W., 189).

1818. Any person desiring the **establishment**, vacation, or alteration of a public road shall file in the clerk's office of the proper county a **petition** signed by at least ten electors residing within five miles of the road proposed to be established or vacated, in substance as follows: "To the board of ——— county: The undersigned ask that a public road, commencing at ———, and running thence ———, and terminating at ———, be established, vacated, or altered (as the case may be)."

A petition with affidavit as to residence of signers gives clerk power to appoint appraisers. All after-proceedings construed liberally. **25**, 229 (41 N. W., 185). In order to show that one has the requisite interest it is only necessary for him to allege that he is a citizen of the county residing within five miles of the proposed road. **20**, 652 (31 N. W., 232). Establishment of road may be by dedication or *user;* requisites of such establishment discussed. **10**, 520 (7 N. W., 280). See **7**, 30.

1819. The **petitioners** for establishment or alteration of any public road shall, at the time of filing their petition therefor, **deposit** with the county clerk a sufficient sum of money to pay for the laying out or alteration of such road, the **expense** thereof to be paid out of such deposit, unless the road is finally established or altered. If the road is finally established or altered, the money shall be returned to the persons who deposited the same.

1820. Upon compliance with the foregoing requisites, the county **clerk** shall appoint some suitable and disinterested **elector** of the county a commissioner **to examine** into the expediency of the proposed road, alteration, or vacation thereof, and report accordingly.

1821. The **commissioner** is not confined to the precise matter of the petition, but may **inquire** and determine whether that or any road in the vicinity, answering the same purpose and in substance the same, be required; but such road must not be established through any burying ground which is exempt from execution; nor through any garden, orchard, or ornamental ground contiguous to any dwelling house, so as to cause the removal of any building, without the consent of the owner.

1822. In forming his judgment he must take into consideration both the public and private **convenience, and** also the **expense** of the proposed road.

1823. After a general examination, if he shall **not** be **in favor** of establishing the proposed road, he will so **report,** and no further proceedings shall be had on that petition.

1824. If he deems such establishment expedient, he may **proceed** at once **to lay out** the road as hereinafter directed, and may report accordingly, if the circumstances of the case are such as to enable him to do so, without pursuing the course pointed out in the next section.

1825. If the **precise location** of the road cannot be otherwise given, he must cause the line of the road to be accurately surveyed and plainly marked out.

1826. Any **commissioner** other than the county surveyor must be **sworn** to faithfully and impartially discharge his duty as such commissioner, and, after being thus qualified he shall have power to swear the assistants employed to a faithful and impartial performance of their respective duties in laying out the road described in his commission.

1827. **Stakes** must be set at each change of direction, on which shall be marked the **bearing** of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals in the prairie, not exceeding a quarter of a mile each; in the timber the course must be indicated by trees suitably blazed.

1828. **Bearing** trees must, when convenient, be established **at** each **angle,** and the position of the road relative to the corners of sections, and junctions of streams, or any other natural or artificial monument, or conspicuous object, must, as far as convenient, be stated in the field notes, and shown on the plat

1829. A correct **plat** of the road, together with a copy of the field notes of the surveyor, if one has been employed, must be filed as a part of the commissioner's **report,** and he shall also state the probable cost of the work in laying out or altering such road, including any necessary bridges, culverts, and ditches. Such report shall be filed with the county clerk.

1830. If the report of the commissioner be in favor of establishing or altering the road, the county **clerk** must **appoint** a **day,** not less than sixty, nor more than ninety days, on or before which day all **objections** to the establishment or alteration to the road, and claims for damages by reason thereof, must be filed with the clerk.

1831. The **time** for the commissioner to commence the **examination** shall be **fixed by** the **clerk,** and if he fails to so commence, or report, the clerk may fix another day, or extend the time for making such report, or may appoint another commissioner.

1832. **Notice** shall be **published** for four weeks in some newspape. published in the county, if any such there be, or if there be no newspaper published in the county then such notice shall be posted in at least three public places along the line of said proposed road, which notice may be in the following form: "To all whom it may concern: The commissioner appointed to locate, vacate, or alter (as the case may be) a road commencing at ——— in ——— county, running thence (describe in general terms all the points as in the commissioner's report) and terminating at ———, has reported in favor of the establishment (vacation or alteration) thereof, and all objections thereto, or claims for damages, must be filed in the county clerk's office on or before noon of the —— day of ———, A. D. ——, or such road will be established (vacated or altered) without reference thereto. A. B., County Clerk." The publication or posting of such notice shall be a sufficient notice to all persons owning land over which any road is proposed to be located.

A proper notice is jurisdictional. 23, 211 (36 N. W., 494).

1833. No objections or **claims for damages** shall be filed or made after noon of the day fixed for filing the same, and if no objections or claims for damages are filed on or before noon of the day fixed for filing the same, and the county clerk is satisfied the provisions of the preceding section have been complied with, he shall report to the county board at their next session all the proceedings hereinbefore provided for.

1834. If **objections** to the establishment of the road or claims for damages are filed, the further **hearing** of the application shall stand continued to the next session of the county board held after the commissioners appointed to assess damages have reported.

1835. When claims for **damages** are filed and on the day appointed for filing the same, the county clerk must appoint three suitable and disinterested electors of the county as **appraisers,** to view the ground on a day fixed by him, and report upon the amount of damages sustained by the claimants; such report shall be made and filed in the clerk's office within thirty days after the day they are appointed.

1836. All **claims for** damages and objections to the establishment, vacation, or alteration of the road must be **in writing,** and the statements in the application for damages shall be considered denied in all the subsequent proceedings.

In supreme court only the objections made before commencing will be considered. 28, 837 (45 N. W., 249).

1837. The clerk shall cause notice of their appointment to be given to each of the **appraisers,** fixing the hour at which they are to **meet** at the office of the clerk, or of some justice of the peace therein named.

1838. If the **appraisers** are not all present within one hour of the time fixed, the clerk or justice, as the case may be, shall fill the **vacancy** by the appointment of others. The appraisers must be **sworn** to discharge their duty faithfully and impartially. Should the report not be filed in time, or should any other good cause for delay exist, the clerk may postpone the time for final action on the subject, and may, if expedient, appoint other commissioners.

1839. Should no damages be awarded the applicant therefor, the whole of the **costs** growing out of his application shall be paid by him.

1840. At the next meeting of the **county board,** after the proceedings hereinbefore contemplated have been had, the said board may **hear testimony,** consider petitions for and remonstrances against the establishment, vacation, or alteration, as the case may be, if such remonstrance be filed within the time provided in section 19 [1833], and may establish, vacate, or alter, or refuse to do so, as in their judgment founded on the testimony the public good may require. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment, vacation, or alteration, conditioned upon the payment in whole or in part of the damages awarded, or expenses in relation thereto.

Measure of damages shall be the fair market value of the land actually taken, while special benefits may be set off against any local or incidental injury to the residue of the land. 3, 243.

1841. In the latter case a day shall be fixed for the performance of the **condition,** which must be before the next session of the board, and if the same is not performed by the day thus fixed, the board shall, at such session, make some final and unconditional order in the premises.

1842. Any order made or action taken in the establishment of a road shall be entered in the **road record,** distinguishing between those made or taken by the clerk and those by the county board.

1843. After the road has been finally established, the **plat** and **field notes** must be **recorded** by the county clerk, and the road overseers of the district through which such road passes shall be directed by the clerk to have the same opened and worked; but when crops have been planted or sowed before the road is finally established, the opening thereof shall be delayed until the crop is harvested.

1844. The establishment of a **new road** on the route of a road already **established** according to law shall not vacate the road previously established, unless such vacation is prayed for in the petition, and so declared in the order establishing a new road.

1845. Whenever a public road is ordered to be established or altered, according to the provisions of this chapter, which road shall pass through or on inclosed land not planted or sowed with crops, the road overseer shall give the owner or occupant of such land sixty days' **notice** in writing to **remove** his **fences.** If such owner or occupant does not remove his fence within sixty days after such notice, the overseer shall cause the same to be removed, and the road opened and worked; and such owner shall forfeit the sum of one dollar for every day he shall permit his fence to remain after the expiration of said sixty days, and he shall pay all necessary **cost** of removal, to be collected by said overseer before any justice of the peace having jurisdiction, for the use and benefit of the school fund.

This is not unconstitutional and may be enforced after due notice. **23,** 303 (36 N. W., 548).

1846. All public **streets of villages** not incorporated are a part of the public road; and all road overseers or persons having charge of the same, in the respective districts of such villages, shall work the same as provided by law.

1847. Such portions of all **roads** as lie **within** the limits of any **city** or incorporated village, shall conform to the direction and grade, and be subject to all the regulations of other streets in such city or village.

1848. **Roads** or streets shall not be established or opened **across** the **lands reserved** by the state for its various institutions lying adjacent thereto without the express consent of the legislature.

1849. The establishment, vacation, or alteration of a public road, either **along** or **across** a **county line,** may be effected by the concurrent action of the respective county boards in the mode hereinbefore prescribed. The commissioners appointed to locate the road in such cases must act in concert, and the road will not be deemed established, vacated, or altered in either county until it is so in both. All expenses incurred under the provisions of the preceding section, and all expenses in keeping public roads on county lines in repair, shall be paid equally by the counties interested.

1850. Hereafter there shall be no distinction between roads heretofore known as **state** roads and **county roads**; both are alike subject to the provisions of this chapter. Roads established by the concurrent action of the county boards of two or more counties can only be discontinued by the concurrent action of the county boards of the several counties in which the same may be situated, but such roads shall be treated in all other respects as provided in this chapter.

1851. **Public roads** may be established without the appointment of a commissioner, provided the written **consent** of all the owners of the land to be used for that purpose be first filed in the county clerk's office; and if it is shown to the satisfaction of the county board that the proposed road is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a public road.

1852. If a **survey** for the establishment of the road named in the preceding section is necessary, the board, before ordering such survey, may require the parties asking for the establishment of such highway to pay, or secure the payment, of the expenses of such survey.

1853. Any applicant for **damages** claimed to be caused by the establishment of a road may **appeal** from the final decision of the county board· to the district court of the county in which the land lies; but notice of such appeal must be served on the county clerk within twenty days after the decision is made. If the road has been established on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition for the highway, if there are that many who reside in the county.

1854. An **appeal** may also be taken by the petitioner for the road as to the amount of damages, if the establishment of the road has been made conditional upon his paying the damages, by his serving notice of such appeal on the county clerk and applicant for damages within twenty days after the decision of the board, and filing a bond in the office of such clerk, with sureties to be approved by him, conditioned for the payment of all costs occasioned by such appeal, unless the appellant fails to recover a more favorable judgment in the district court than was allowed him by such board.

Appeals for damages caused by the establishment of a road should be taken under these sections and not under general appeal law. 14, 311 (16 N. W., 150).

1855. In the cases contemplated in the two preceding sections, the clerk shall, within ten days after the notices aforesaid are served and filed in his office, make out and file in the office of the clerk of said court a **transcript** of the papers on file in his office, and the proceedings of the board in relation to such damages. The claimant for damages shall be plaintiff, and the petitioner for the road defendant, except the damages have been ordered paid out of the county treasury, in which case the county shall be defendant.

1856. The amount of **damages** the claimant is entitled to shall be ascertained by said court in the same manner as in actions by ordinary proceedings, and the amount so ascertained shall be entered of record, **but no judgment** shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of the county board, who shall thereafter proceed as if such amount had been by them allowed the claimant as damages.

1857. If the appeal has been taken by the claimant, the petitioner of the road or the county must pay the **costs** occasioned by the appeal; but the county shall pay only when the damages have been ordered to be paid out of the county treasury. If the petitioner for the road appeals, he must pay the costs, unless the claimant recovers a less amount than was allowed him by the board, in which case the costs shall be paid by the claimant. Judgment shall be rendered in accordance with the foregoing provisions.

1858. When by the reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any **road** since the original survey that its location cannot be accurately defined by the papers on file in the proper office, the county board of the proper county may, if they deem it necessary, cause such road to be **resurveyed,** platted, and recorded as hereinbefore provided.

1859. If the same has not been heretofore done in any other manner, the county clerk shall, within six months after this act shall take effect, cause **every road** in his county, the legal existence of which is shown by the records and files in his office, to be **platted** in a book to be obtained and kept for that purpose, and known as the "road-plat book." Each township or precinct shall be platted separately, on a scale of not less than four inches to the mile; and such clerk shall have all changes in or additions to the roads legally established immediately entered upon said plat-book—with appropriate references to the files in which the papers relating to the same may be found.

1860. The **section lines** are hereby declared to be **public roads** in each county in this state, and the county board of such county may, whenever the public good requires it, open such roads without any preliminary survey and cause them to be worked in the same manner as other public roads; *Provided*, That any damages claimed by reason of the opening of any such road shall be appraised and allowed, as nearly as practicable, in manner hereinbefore provided. **And provided further*, That the county board before opening such section line road shall direct the county surveyor to perpetuate the existing government corners along such line by planting monuments of some durable material with suitable witnesses whenever practicable, and make a record of the same.

All after * added 1885, p. 316. Discretionary with board whether section line be declared road without petition. **20**, 652 (31 N. W., 232). County board may order any section line opened as a road, but cannot vacate such a road without a hearing. **26**, 260 (41 N. W., 1099).

1861. When the **lands** of any person shall be **surrounded** or enclosed, or be shut out and cut off from a public highway by the lands of any other person or persons, who refuse to allow such person a **private road** to pass to or from his or her said land, it shall be the duty of the county board, on petition of any person whose land is so surrounded or shut out, to appoint three disinterested freeholders of the precinct or township, in counties under township organization, in which the land lies, as **commissioners to view** and mark out a road from land of the petitioner to the nearest public highway, and assess the damages the person will sustain through whose land the road will pass.

1862. The person desiring to secure the **right of way** shall give the person or persons through whose lands the road will run at least two days' **notice** of such intended application, by leaving or causing to be left a written notice at his usual place of abode; and satisfactory evidence that such notice has been given shall be presented to the board before commissioners shall be appointed.

1863. The **commissioners** shall, before entering upon the discharge of their duties, **take** and subscribe an **oath** before some judge or justice of the peace, that they are not interested nor of kin to either of the parties interested in the proposed road, and that they will faithfully and impartially view and mark out said road to the greatest ease and convenience of the parties, and as little as may be to the injury of either, and assess the damages which will be sustained by the party through whose land it will run.

1864. Said **commissioners** shall make out a **report** of their proceedings, stating particularly the course and distance of said road, and the amount of damages assessed, which report, together with a certificate of the oath, shall be returned to the county commissioners and filed by the county clerk.

1865. If the **report** be **approved** by the county board, and the petitioner shall produce satisfactory evidence that he has paid the damages assessed (or tendered payment, if the party refuse to receive it), and all costs attending the proceedings, the county board shall grant an order to said petitioner to open a road not exceeding fifteen feet in width; and if any person or persons obstruct said road, such person or persons shall be liable to all the penalties for obstructing a public road; *Provided, however*, If such road shall pass through any inclosure, and it shall be required by the owner thereof, the person applying for such road shall put up and keep at each entrance into such inclosure a good and substantial swinging gate; *Provided further*, That either party may **appeal** from the decision of the county board in like manner as prescribed in case of public roads.

1866. Upon the establishment of the **right of way**, as in this chapter provided, the same shall **vest** and descend as an **easement** in the party and his or her heirs or assigns forever.

1867. The county board shall divide the county, except that portion occupied by cities and incorporated villages, into as many **road districts** as may be necessary, and may alter the boundaries thereof as may seem proper; *Provided, however*, That in no case shall any road district be so constituted as to be within the limits of two distinct voting precincts, or townships in counties under township organization; and it shall be the duty of the county clerk, upon application, to furnish each supervisor with a particular description of the boundaries of his district.

1868. The **overseers** of the respective districts are hereby authorized to **procure,** if they deem it necessary, a **plow,** and one or more scrapers for the use of the road district, the cost thereof to be paid out of the road fund of the district, and allowed in the settlement with the overseer.

1869. If any **overseer** shall **neglect** or refuse to keep the roads of his district in good repair as the number of hands and the amount of road tax under his control would reasonably enable him to do, or otherwise neglect to perform any of the duties imposed upon him by this chapter, he shall be liable on his official bond to pay a **fine** of not less than five nor more than fifty dollars, to be recovered by civil action before any justice of the peace in the county at the suit of any citizen for the benefit of the school fund.

County not liable. **10,** 554 (7 N. W., 269). No action lies against overseer. **5,** 392.

1870. In case of any **sudden damage** or injury to any **bridge,** culvert, **or road,** the overseer may, on one day's notice, call out any and all able-bodied men under fifty years of age in his district (but not more than two days at any one time without their consent), to effect all repairs immediately necessary thereon; and persons so called out shall be entitled to receive $1.50 per day from the fund in the hands of such overseer.

No authority to use contiguous land. **9,** 331 (2 N. W., 707).

1871. If any able-bodied **man** when duly summoned as provided in the preceding section **fail to** appear and **labor** diligently by himself or his substitute, or send satisfactory excuse thereof, he shall be **liable** to a penalty of five dollars, to be recovered by civil action before any justice of the peace, at the suit of any citizen for the benefit of the school fund.

1872. The county **board may,** in their discretion, whenever there is sufficient money on hand in the county road fund, **build** or repair any **bridge** or bridges **within** the limits of any incorporated **city** or village in their county.

1873. Any **public road** that is or shall hereafter be laid out on a **county or town line,** shall be held to be a road on a county or township line, although, owing to the topography of the ground along said county or township line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or township line.

1874. Whenever any **persons, traveling** with any carriages, shall meet on any road in this state, the persons so meeting shall seasonably **turn** their carriages **to the right** of the center of the road, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offense; *Provided*, This section shall not be construed to apply to any case, unless some injury to person or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track; nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.

1875. No person owning any carriage, running or traveling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage who is addicted to **drunkenness** or the excessive use of spirituous liquors, and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day for all the time during which he shall thereafter have kept any such driver in his employment.

1876. If any **driver,** whilst actually employed in driving any such carriage, shall be **guilty of intoxication** to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to **discharge** such driver from his employment; and every such owner who shall retain or have in his employ, within three months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice.

1877. **No person** driving any carriage upon any road within this state, with or without passengers therein, shall **run** his **horses** or carriage (or permit the same to be run) upon any occasion, or for any purpose whatever; and no person riding any horse or mule shall run the same on any public road, except in cases of necessity; and every person who shall offend against the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding ten dollars, or imprisoned not exceeding sixty days, at the discretion of the court.

1878. It shall **not be lawful** for any person **to leave** a horse, mule, or **team** standing upon any public road, unless the same shall be securely hitched or guarded. Any person offending against the provisions of this section shall be liable to a penalty of $5 for each and every such offense.

1879. It shall **not be lawful for** the **driver** of any carriage used for the purpose of conveying passengers for hire to **leave** the **horses** attached thereto, while the passengers remain therein, without first making such horses fast with a sufficient halter, rope, or chain, or by placing the lines in the hands of some other person, so as to prevent their running. And if any such driver shall offend against the provisions of this section he shall forfeit the sum of $20, to be recovered by civil action at the suit of any citizen for the benefit of the school fund.

1880. The **owners** of every **carriage** running upon any road, for the conveyance of passengers, shall be **liable,** jointly and severally, to the party injured, in all cases for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person or to the property of any person; and that, whenever the act occasioning such injury or damage be willful, negligent, or otherwise, in the same manner that such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, willfully offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned not exceeding thirty days, or fined not exceeding $100.

1881. The term "**carriage,**" as used in this act, shall be **construed** to include stage coaches, wagons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.

1882. **Nothing** herein contained shall be construed to **prevent** additional regulations, or the **licensing** of hacks and carriages by the corporate authorities of cities and villages, under the ordinances of such corporation.

1883. If any person shall **injure** or obstruct a **public road** by falling a tree or trees in, upon, or across the same, or by placing or leaving any other obstruction thereon, or by encroaching upon the same with any fence, or by plowing or digging any ditch or other opening thereon, or by turning a current of water so as to saturate or wash the same, or shall leave the cutting of any hedge thereupon, for more than five days, he shall forfeit for every such offense a sum not less than $3 nor more than $10, and in case of placing any obstruction on the road, an additional sum of not exceeding $3 per day for every day he shall suffer such obstruction to remain after he has been ordered to remove the same, by any of the road overseers, complaint to be made by any person feeling himself aggrieved; *Provided*, This section shall not apply to any person who shall lawfully fell any tree for use, and will immediately remove the same out of the road, nor to any person through whose land a public road may pass, who shall desire to drain his land, and shall give due notice to the overseer of such intention; *And provided further*, That any overseer of roads, after having given reasonable notice (to the owners) of the obstruction, or person so obstructing, or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road aforesaid, to be collected by said overseer before any justice of the peace having jurisdiction.

1884. If any **person** shall purposely **destroy** or injure any **sidewalk,** public **bridge,** culvert, or causeway, or remove any of the timber or plank thereof, or obstruct the same, he shall **forfeit** a sum not less than $3 nor more than $100, and shall be liable for all damages occasioned thereby, and all necessary costs of rebuilding or repairing the same.

1885. It shall be lawful for the owner or occupants of land bordering upon any public road to build **sidewalks** not to exceed six feet in width, and to plant shade and ornamental **trees** along and in such road at a distance not exceeding one-tenth of the legal width of the road from its margin, and also to erect and maintain a fence so long as it shall be actually necessary for the purpose of raising a **hedge** on said margin a distance of six feet from the within said marginal lines.

1886. Whoever shall **ride** or drive **faster than** a **walk** over any bridge, shall **forfeit** for every such offense the sum of $5.

1887. The **overseers** of the several road districts are hereby authorized to **enter** upon any **land** adjacent to any public road in their respective districts, for the purpose of **opening** any ditch, **drain,** necessary sluice, or water-course, whenever it shall be necessary to open a water-course from any road to the natural water-courses, and to dig, open, and clean ditches upon said land, for the purpose of carrying off the water from said road, or to drain any slough or pond on said road; *Provided*, That unless the owner of such land, or his agent, shall first consent to the cutting of such ditches, the overseer shall call to his assistance three electors of his district, who shall **appraise** the **damages** sustained by such person. Such appraisers shall make their award in writing, and the same shall be paid out of any money in the hands of the overseer, out of or belonging to his district, and if there be none such, the same shall be paid by the county board, out of the county road fund.

1888. **Justices** of the peace shall have **jurisdiction** in all cases arising under this act, where any fine, penalty, or forfeiture imposed does not exceed their jurisdiction.

1889. It shall be the duty of each overseer of roads during the months of June or July in each year to make provision for the **prevention** and spread **of prairie fires** in his district by causing at least four furrows to be plowed on each side of such public or main traveled roads in his district, not less than two rods from the center of such roads, where practicable, and at a suitable time and as soon thereafter as the grass becomes sufficiently dry, he shall cause to be burned all grass between said plowing on either side of the roads. The labor to be performed under the provisions of this section shall be a part of the labor to be performed by persons assessed to pay labor or road tax, and they shall be allowed compensation at the rate hereinafter provided for other work on public roads.

Amended 1883, p. 284.

1890. In counties not under township organization, one-half of all moneys paid into the county treasury, from the several road districts, in discharge of road tax, shall constitute a **county road fund** which shall be at the disposal of the county commissioners for the general benefit of the county for road purposes; the other half of all moneys paid into the county treasury from the several road districts, in discharge of road tax, and all money paid in discharge of labor tax, shall constitute **a district road fund,** which shall be paid by the county treasurer to the overseer of the road district from which it was collected, and expended by him only for the following purposes: *First*—For the construction and repair of bridges and culverts and making fire-guards along the line of roads. *Second*—For the payment of damages of the right of any public road. *Third*—For the payment of wages of overseers, and for the expense of procuring the necessary guide boards. *Fourth*—For the payment of wages of commissioners of roads, surveyor, chainmen and other persons engaged in locating or altering any county road, if the road be finally established or altered, as hereinbefore provided. *Fifth*—For work and repairs upon road. **Provided*, That the county commissioners of counties not under township organization may levy the same rate of road tax upon the property within any incorporated city of the metropolitan class and cities of the first class as is levied upon the property situated within the several road districts, and all moneys paid into the county treasury in discharge of road tax levied upon property within the incorporate limits of any such city shall constitute a part of the general road fund of the county, and be subject to the disposal of the county commissioners for the general benefit of the county and city, one-half of which shall go to the county for road purposes and one-half to the council of said cities to be used for road purposes.

All after * added 1891, p. 314.

1891. The county commissioners shall have power, upon receiving a petition signed by at least two-thirds of the qualified electors of any district, to order that any road **moneys** belonging to the district be **expended in** any **other district,** under the direction of the proper overseer thereof; and in such case such overseer shall pay over all moneys in his hands to the overseer of the district in which such money is ordered to be expended and take his receipt for the same.

1892. It shall be the duty of each overseer of roads to give at least three days, **notice** to all persons residing in his district liable **to pay labor** and road **tax** therein, either personally or in writing left at their place of abode, of the time when between the first day of April and the first day of October in each year, and the place where they may **appear** and pay their labor tax and three-fourths of their road tax in labor, and with what implements. *And it shall be the duty of the county clerk in each county in the state of Nebraska to furnish to each overseer of roads in his county, on or before the first day of March in each year a list of all property subject to road tax in his district, the name of the owner or owners of the same, together with the amount of road tax due thereon, said road tax to be computed upon the assessment of the previous year.

Amended and all after * added 1881, p. 328.

1893. The **overseer** shall **allow** all persons who may appear in pursuance to such notice and offering to pay their labor tax and three-fourths [of] their road tax in labor, under his direction, the sum of **$1.50 for every day** he shall actually work eight hours on such road, $1.50 for each yoke of oxen, and $1.50 for each span of horses he shall furnish agreeably to the requirements of the overseer; and for such labor performed the overseer shall give to such person a **certificate,** which certificate shall be received by the county treasurer in discharge of the labor tax and three-fourths of the road tax of such person as aforesaid. The one-fourth of the road tax shall be paid in cash; *Provided,* That any person who is a resident of the district not notified by the overseer to labor upon the roads as hereinbefore provided, shall be discharged from the payment of said labor tax and three-fourths [of] said road tax.

Law as to notice, see 4, 306. Prior to passage of present law failure to give notice would not release lien of the tax, and the provision that notice is to be given to residents only does not invalidate the tax as to non-residents. 4, 306.

1894. Each **overseer** of roads shall **make a return** to the county treasurer on or before the first day of November of each year, containing the names of each person liable to pay labor or road tax, or both, in his district, whom he has notified to labor upon the roads, as provided in section 78 [1892]. Such returns shall be made under oath, and shall be conclusive evidence that notice to labor, as aforesaid, upon the persons therein named has been made by said overseer. If said overseer makes a false return he shall be guilty of perjury and be punished accordingly.

1895. **Overseers** of roads shall make an annual **settlement** under oath with the board of county commissioners, at their first meeting in January, showing the amount of money which has come into their hands by virtue of their office and how the same has been expended. The county commissioners, if they deem it expedient, shall have power to cite any overseer to appear before them at any other time and make settlement as herein provided, giving him reasonable notice thereof.

1896. The **overseer** shall be **allowed** two dollars ($2) per day, including the time necessarily spent in notifying the hands, superintending the work on roads and making out his return, but not to exceed the sum of thirty dollars ($30) in any one year, which sum shall be paid out of the district road fund after deducting his own labor tax and three-fourths (¾) of his road tax. If there is not sufficient money in the district road fund with which to pay said overseer, he shall be entitled to a certificate from the county board, which certificate shall be paid out of the district road fund, and if there be not sufficient money in the district road fund to pay such certificate, then the county treasurer shall register and pay said certificate in the same manner the county warrants are paid a warrant on the county general fund, from the county board, for the amount of labor performed.

Amended 1887, p. 586.

1897. All **contracts** for the erection and reparation of bridges and approaches thereto, for the building of culverts, and improvements on roads, the cost or expense of which shall exceed one hundred dollars, shall be let by the county commissioners to the **lowest** competent **bidder,** but no contract shall be entered into for a greater sum than the amount of money on hand in the county road fund derived from the levy of previous years, and two-thirds of the levy for the current year, together with the amount of money in the district road fund of the district where such work is to be performed; and every bidder, before entering on any work pursuant to contract, shall give bond to the county with at least two good and sufficient sureties, in any sum double the amount of the contract, which bond shall be approved by the county commissioners, conditioned for the faithful execution of the contract.

1898. Before any contracts, as aforesaid, shall be let, the county commissioners shall **advertise for bids** therefor, and shall require bidders to accompany their bids with plans and specifications of the work, and they may accept the most suitable plan, and award the contract accordingly, or may reject any or all bids.

1899. Such **advertisement shall state** the general character of the work, and shall be published four consecutive weeks in some newspaper printed and of general circulation in the county; and if there be no newspaper printed in the county, then such advertisement shall be published in some newspaper of general circulation therein. Where the cost of the work exceeds five hundred dollars, such advertisement shall also be published four consecutive weeks in some newspaper printed in and of general circulation throughout the state.

A paper in county of general circulation in the state would be sufficient. **18**, 360 (25 N. W., 356).

1900. The **cost** of the work performed under any contract entered into under the provisions of the preceding sections shall be **paid from** the money belonging to the district in which such work is performed; or, if that be insufficient, the balance shall be paid from the county road fund; *Provided*, That where under any law of this state bonds are voted to aid in the building or repairing of any bridge, the expense thereof shall be paid by such bonds, or the proceeds thereof.

1901. **Bridges** over streams which divide counties, and bridges over streams on roads **on county lines**, shall be built and repaired at the equal expense of such counties; *Provided*, That for the building and maintaining of bridges over streams near county lines, in which both are equally interested, the expense of building and maintaining any such bridges shall be borne equally by both counties.

This does not empower one county to build or repair a bridge and collect one-half of the expense from the other. **12**, 8 (10 N. W., 413); **18**, 355 (25 N. W., 356).

1902. For the purpose of **building** or keeping in repair **such bridge** or bridges, it shall be lawful for the county boards of such adjoining counties to enter into **joint contracts**; and such contracts may be enforced, in law or equity, against them jointly, the same as if entered into by individuals, and they may be proceeded against, jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges, or for any damages growing out of such neglect; **Provided*, That if either of such counties shall refuse to enter into contracts to carry out the provisions of this section, for the repair of any such bridge, it shall be lawful for the other of said counties to enter into such contract for all needful repairs, and recover by suit from the county so in default such proportion of the costs of making such repairs as it ought to pay, not exceeding one-half of the full amount so expended; but the provisions of this act shall apply only to those bridges which have been built or may hereafter be built by co-operation of the counties separated by said stream.

All after * added 1881, p. 329.

1903. If the **county board** of either of such counties, after reasonable notice in writing from the county board of any other such county, shall neglect or **refuse to build** or repair any **such bridge**, when any contract or agreement has been made in regard to the same, it shall be lawful for the board so giving notice to build or repair the same, and to recover, by suit, one-half (or such amount as shall have been agreed upon) of the expense of so building or repairing such bridge, with costs of suit and interest from the time of the completion thereof, from the county so neglecting or refusing.

1904. Any **judgment** so recovered against the county board of either of such counties shall be a charge on such county, unless the jury shall in their verdict certify that the neglect of or refusal of such board was willful or malicious, in which case only the members of such board shall be personally liable for such judgment, and the same may be enforced against them in their personal and individual capacity, and upon their official bonds.

1905. In counties under township organization all money paid to the township treasurer in discharge of township road tax, and all money paid in discharge of labor tax, shall constitute a **township road fund,** one-half of which shall be held by said treasurer, subject to the order of the town board, and which shall be at their disposal for the general benefit of the township, for road and bridge purposes; the other half of such money shall be paid by the town treasurer to the overseer of the district from which such tax is collected, and expended by such overseer only for the following purposes: *First*—For the construction and repair of bridges and culverts, and making fire guards along the lines of the roads. *Second*—For the payment of damages for right of way of any public road. *Third*—For the payment of wages of overseers, and for necessary guide boards. *Fourth*—For the payment of wages of commissioners of roads, surveyor, chainmen, and other persons engaged in locating or altering any county road, if the road be finally established or altered as herein before provided. *Fifth*—For work and repairs on roads.

1906. The town board shall have power, upon receiving a petition signed by at least two-thirds of the qualified electors of any district, to order that any road **moneys** belong[ing] to the district be **expended in** any **other district** in such township, under the direction of the proper overseer thereof, and in such case such overseer shall pay all money in his hands to the overseer of the district in which such money is ordered to be expended, and take his receipt for the same.

1907. It shall be the duty of each overseer of roads to give at least three days' **notice** to all persons residing in his district liable **to pay labor** and road **tax,** either personally or by writing left at their usual place of abode, of the time when between the first day of April and the first day of November in each year, and the place where they may appear and pay their labor tax and three-fourths of their township road tax in labor, and with what implements.

1908. The **overseer** shall allow all persons who may appear in pursuance of such notice the same allowances as in counties not under township organization, as provided in section 79 of this act [1893], and the **certificate** thereof shall be received by the treasurer in **discharge** of the **labor tax** and three-fourths of the township road tax, of such person; the other one-fourth of such township road tax and the county road tax shall be paid in cash; *Provided,* That any person not notified by the overseer to labor upon the roads as hereinbefore provided shall be discharged from the payment of said labor tax, and three-fourths of such township road tax.

1909. Each **overseer** of roads shall **make a return** to the township treasurer on or before the first day of November in each year, containing the names of each person liable to pay labor or road tax, or both, in his district, whom he has notified to labor upon the roads, as provided in section 93 [1907]. Such return shall be made under oath, and shall be conclusive evidence that notice to labor as aforesaid upon the persons therein named has been made by said overseer. And when the township treasurer returns the duplicate tax list to the county treasurer, as provided by law, he shall accompany the same with the returns made to him by said overseers. If any overseer makes a false return, he shall be guilty of perjury, and be punished accordingly.

1910. Each **overseer** shall, at the time required by the town board, make a **settlement of** his **accounts,** showing the amount of money coming into his hands as such overseer, and how the same has been expended. In such settlement he shall be allowed the same amount for similar services by overseers in counties not under township organization, as provided in section 82 [1896], which sum shall be paid out of any money belonging to his district, after deducting his labor tax, and three-fourths of his township road tax; and if there be not sufficient money belonging to the district with which to pay said overseer, he may be paid in whole or in part out of the town ship road fund, or for any balance due him he may receive from the town board a certificate which may be received in payment of his own township road tax for any succeeding year.

1911. All **contracts for** the erection and reparation of **bridges** and approaches thereto, for the building of culverts and improvements on roads, within the limits of any township, the cost or expense of which shall exceed one hundred dollars, shall be let by the town board to the **lowest** competent **bidder**; but no contract shall be entered into for a greater sum than the amount of money on hand in the township road fund, derived from the levy of previous years and two-thirds of the levy of the current year, together with the amount of money on hand belonging to the district where such work is to be performed. The contract shall be let and the successful bidder give bond as provided in sections 83, 84, and 85, for the letting of contracts in counties not under township organization; and all the provisions of said sections shall apply, so far as applicable, to the letting of contracts provided for in this section; *Provided,* That where any work is to be performed or contract let, the cost of which is to be paid by order of the county board entirely out of the county road fund, or by the entire county, the contract therefor shall be let by the county board in the same manner as provided in sections 83, 84, and 85 [1897–9], for the letting of such contracts in counties not under township organization.

1912. Where any **contract** is let as aforesaid by the town board, the **expense** of which is **to be borne** exclusively by the township, it shall be paid from the money belonging to the district in which such work is performed; or, if that be insufficient, the balance shall be paid from the township road fund, and if the work be of general benefit to the entire township, the town board may, in their discretion, cause the same to be entirely paid for from the township road fund, or from the fund of each district *pro rata; Provided,* That if, under any law of this state, bonds are voted to aid in the building or repairing of any bridge, the expense shall be paid by such bonds or the proceeds thereof.

1913. Where a public **road** is located **on township lines,** the county board shall allot the part of such road which such town shall keep in repair, and the part so allotted shall be considered as wholly belonging to such town.

1914. When it shall be necessary to build, construct, or repair any **bridge, or road, in** any **town,** which would be an unreasonable burden to the same, the cost of which will be more than can be raised in one year by ordinary road taxes in such town, the town board shall present a petition to the county board of the county in which such town is situated, praying for an appropriation from the **county** treasury to **aid** in the building, constructing, or repairing of such bridge or road, and such county board may (a majority of all the members elect voting for the same) make an appropriation of so much for that purpose as in their judgment the nature of the case requires and the funds of the county will justify; said appropriation to be expended under the supervision of an authorized agent or agents of the county, if the county board shall so order. In such case, where the county grants aid, as aforesaid, the contract shall be let by the town board, under the provisions of sections 83, 84, and 85 [1897-9].

1915. **Bridges** over streams which divide **township lines**, and bridges over streams on roads on township lines shall, if the expense thereof be not paid by the county board, be built and repaired at the equal expense of such towns; *Provided*, That for the building and maintaining of bridges over streams near township lines, in which both are equally interested, the expense of building and maintaining such bridges shall be borne equally by the townships so interested.

1916. **Contracts** for the purposes mentioned in the foregoing section may be entered into and enforced in the same manner as provided in sections 89 and 90 [1903-4], for the enforcement of similar contracts in counties not under township organization.

Sec. 1917. "An act to **exempt pensioners**, disabled soldiers, and invalids **from** paying a **poll tax** or working on the public highways in this state." 1889, p. 579. In force June 30.

1917. That **all pensioners** of the United States shall be exempt from paying a poll tax or performing labor on any highway in this state.

Secs. 1918 and 1919. "An act to **prohibit** the **obstructing roads** and highways." 1885, p. 317. In force June 5.

1918. That from and after the passage of this act it shall be unlawful for any person to build a **barbed wire fence** across or in any plain traveled road or track in common use, either public or private, in this state, without first putting up sufficient guards to prevent either man or beast from running into said fence.

1919. Any **person violating** the provisions of the foregoing section shall be guilty of a misdemeanor and **fined** not less than five ($5) nor more than twenty-five ($25) dollars, and shall be liable for all damages that may accrue to the party damaged by reason of said barbed wire fence.

Existence of fence no excuse to bailee of horse for negligence in driving. **24**, 352 (38 N. W., 732).

Secs. 1920 to 1923. "An act to compel **railroad** corporations and others to **make** and keep in repair **crossings.**" 1887, p. 588. In force March 31.

1920. Any railroad **corporation,** canal company, mill owner, or any person or persons who now own, or may hereafter own or operate, any railroad, canal, or ditch that crosses any public or private road shall **make and keep in** good **repair** good and sufficient **crossings** on all such roads, including all the grading, bridges, ditches, and culverts that may be necessary, within their right of way.

Act constitutional. Company must maintain suitable crossings in that part of highway within right of way, made necessary by building of railroad. Board of transportation has jurisdiction to hear complaints and make orders in regard to crossings. **29**, 412 (45 N. W., 469).

1921. That the **road supervisor** of any road district where any party or corporation mentioned in section 1 has failed or neglected to comply therewith, shall give thirty days' **notice** in writing to said corporation, company, or person, or their agent, where such crossing is required; a copy of notice to be sworn to and filed with the county clerk.

1922. If any **corporation** or party mentioned in section 1 of this act shall fail or **neglect** for sixty days from date of filing said notice to make said crossing as required by section 1, then it shall be the duty of the county commissioner or **supervisor** to **bring** an **action** in the name of the county, and compel said corporation, company, or person to make such crossing, and said corporation, company, or person shall pay all costs and damages sustained by the county or any person or persons, together with a reasonable attorney's fee for plaintiff.

This remedy cumulative; does not exclude right to compel by mandamus the construction of crossings. **29**, 420 (45 N. W., 469.

1923. All crossings, bridges, and culverts shall be in the center of the road; *Provided*, That where it is impracticable to make a crossing in the center of the road, said corporation, company, or persons may obtain, by purchase or otherwise, the right of way around any obstruction, which shall be surveyed, platted, and recorded in the county where located, and it shall thereafter be a public highway. All costs shall be paid by such corporation, company, or persons.

Sec. 1924. "An act to prevent the digging of ditches or trenches within less than fifteen feet of the center line of public highways." 1885, p. 318. In force March 5.

1924. It shall be unlawful for any road supervisor, contractor, or other person whose duty it shall be to grade any road, highway, or approach to any bridge or culvert, in any county in this state, to dig any ditch, trench, or other excavation, within less than fifteen feet of the center line of such road, highway, or approach, except in cases where for any cause a bridge or culvert shall have been placed one side of the center line of a road; then and in that case no ditch, trench, or other excavation shall be made within less than fifteen feet of the center line of the approach to such bridge or culvert; *Provided*, That this act shall not be so construed as to prevent the digging of a ditch or drain across any road, when it bebomes necessary to make a culvert or bridge for the purpose of allowing the water to flow across the line of such road through such culvert or under such bridge.

Secs. 1925 to 1928. "An act to provide for the publication and distribution of the road law to road supervisors." 1875, p. 115. In force February 23.

1925. That the secretary of state is hereby authorized and required to cause to be published in pamphlet form, put up in suitable paper covers, all laws of this state now in force, prescribing the manner of laying out and opening public roads, and the duties of road supervisors under them.

1926. That as soon as said pamphlets shall be prepared and published, the secretary of state shall immediately transmit to the county clerks of each organized county in this state a sufficient number of said pamphlet laws to supply each supervisor in every county with a copy of the same.

1927. It shall be the duty of each supervisor to carefully preserve said copy and at the expiration of his term of office to deliver the same over to his successor in office.

1928. It is hereby made the duty of each county clerk to certify to the secretary of state the number of road districts in his county, and make requisitions for a sufficient number of said pamphlet laws to supply each district.

II. BRIDGES.

Secs. 1929 and 1930. "An act to provide for the building, maintaining, and repairing certain bridges in counties under township organization." 1887, p. 587. In force July 1.

1929. That in counties under township organization, the expense of building, maintaining, and repairing bridges on public roads over streams shall be borne exclusively by the counties within which such bridges are located.

Prior to passage of this act, duty of each town, where township organization was in vogue, to maintain bridges. 24, 58 (37 N. W., 684).

1930. The county board of every such county shall build, maintain, and repair every such bridge, and make prompt and adequate provisions for the payment of the expense thereof.

Secs. 1931 to 1934. "An act relating to highways and bridges, and liabilities of counties for not keeping the same in repair." 1889, p. 77. In force June 30.

1931. That whenever any highway or bridge in any county in this state shall be out of repair, or unsafe for travel, any three citizens or taxpayers in the state may **notify** the county commissioners of the commissioner district within which the said road or bridge is situated, or if the county be under township organization, the supervisor of the town in which it is situated, in writing, setting forth a description of the road or bridge and the defects therein.

1932. It shall then be the **duty of** the said **commissioner** of the said county or counties, within twenty-four (24) hours after service of said notice, to commence to make suitable repairs to said highway or bridge, and to place it in a safe condition for travel.

1933. If the said **road or bridge** shall be on the line **between two counties,** then the commissioners of the respective districts, within which said road or bridge is located, of the respective counties shall be served with the said notice, or if it be on the line between two townships, in counties under township organization, then the supervisors of both townships in which said road or bridge is situated shall be notified in like manner.

1934. If **special damage** happens to any person, his team, carriage, or other property by means of insufficiency, or want of repairs of a highway or bridge, which the county or **counties** are **liable** to keep in repair, the person sustaining the damage may recover in a case against the county, and if damages accrue in consequence of the insufficiency or want of repair of a road or bridge, erected and maintained by two or more counties, the action can be brought against all of the counties liable for the repairs of the same, and damages and costs shall be paid by the counties in proportion as they are liable for the repairs; *Provided, however,* That such action is commenced within thirty (30) days of the time of said injury or damage occurring.

Secs. 1935 to 1945. "An act to authorize townships to purchase toll bridges and to issue their bonds to pay for the same." 1889, p. 573. In force March 30.

1935. Whenever any **private bridge** owned by any person or corporation shall be situated within or shall be constructed across any river bounding any township, such **township may purchase** such bridge, and thereupon it shall become a public bridge, and be maintained in the same manner as bridges originally built by such township.

1936. No such **bridge** shall be **purchased,** unless sufficient **funds** are in the treasury, except as hereinafter provided.

1937. If there shall not be sufficient funds in such township treasury to purchase said proposed bridge, the said town may borrow money and issue its **bonds** therefor, when authorized, in the manner hereinafter provided.

1938. Whenever the owners of any such bridge shall submit to the **town board** of such township a proposition to sell such bridge, the town board may **submit to** the **voters** of such township a **proposition** to issue the bonds of such township for the purpose of purchasing such bridge in accordance with such offer.

1939. Such **proposition shall state** the amount of said bonds, the date when they shall mature, and the rate of interest which they bear, which in no case shall exceed eight per cent per annum.

1940. The **notice for** said **election** and manner of holding the same shall be governed by the law regulating elections for voting bonds by a county.

1941. If two-thirds of the **votes** cast at such election shall be **in favor** of the proposition, the town board shall cause to be prepared and issued the bonds in accordance with the proposition submitted. Said **bonds** shall be signed by the supervisor, the town clerk, and attested by the clerk of the county under its seal.

1942. Said **bonds shall state** for what purpose issued, the amount and when payable, interest and when payable, and the number of each bond.

1943. The **proposition** to issue said bonds, the **notice** of said election, **canvass** of vote shall be **recorded** in the office of the county clerk, and the county clerk shall enter upon the records of the county board the number, amount, and interest, and date at which each bond issued shall become payable, and the county clerk shall cause such bonds to be registered in the office of the secretary of state and state auditor as required by law.

1944. The county **board** shall each year, until the bonds voted under the authority of this act be paid, **levy** upon the taxable property in the township a **tax** sufficient to pay the interest and five per cent of the principal of bonds issued under this act, and at the tax levy preceding the maturity of any of said bonds, levy an amount sufficient to pay the principal and interest due on said bonds.

1945. **No bonds** shall be **issued** under this act to an amount **exceeding ten per cent** of the assessed value of the taxable property at the last assessment within such township.

III. FERRIES.

Secs. 1946 to 1958 formed ch. 20, R. S. 1866, p. 173, entitled "Ferries."

1946. No person shall be permitted to keep a ferry across any stream running through or bounding on any county in this state without having first obtained a **license** from the board of county commissioners of the proper county for that purpose, as hereinafter provided.

1947. The person applying for such license shall produce satisfactory evidence to the board of county commissioners, by affidavit of the applicant or otherwise, of his having given **notice** by advertisement, set up in at least three public places in the precinct or neighborhood where the ferry is proposed to be kept, twenty days prior to the sitting of the board of commissioners, of his intention to apply to such board, at their next regular term, for license to keep such ferry.

1948. The board of county **commissioners,** being satisfied that the notice hereby required has been given, that a ferry is needed at said place, and that the applicant is a suitable person to keep the same, are hereby authorized to **grant** to the applicant a **license** to keep the same for a term not less than one year nor more than ten years, on the applicant paying into the county treasury of the proper county a sum to be fixed by the board of county commissioners, not less than two dollars nor more than five hundred dollars annually; and on the applicant producing the county treasurer's receipt for the sum so fixed he or she shall receive from the clerk of the said board of county commissioners a license under the seal of said clerk, for which he or she shall pay the clerk the sum of fifty cents.

1949. The **person owning** or possessing **land** on both sides of any stream where a ferry is proposed to be established shall have exclusive **right** to a license for a ferry at such place, and when the opposite banks are owned by different persons the right to a ferry shall be mutual; but if the owner does not apply to the board of commissioners, the board shall grant a license to any person applying for the same, except where either of the landings are not on a public highway, in which case the consent of the owner of the ground shall first be had in writing; *Provided,* That nothing herein contained shall be so construed as to prevent any person from ferrying persons across a small stream in high water; and the board of county commissioners are hereby authorized to direct the county clerk to give any person a permit for that purpose, when in their opinion the stream is too small to justify the expense of a license; *Provided, also,* When any person shall apply for a renewal of his license, at the same place where he kept a ferry the preceding year, the same may be granted or renewed without notice or petition.

1950. When a license shall expire in vacation, and the person who obtained the same shall procure a renewal, the latter license shall include the time from the expiration of the former, as well as the time to which it shall extend in future, and the applicant shall pay a ratable proportion for the whole time therein mentioned, and shall thereupon be exonerated from any penalty to which he would be otherwise liable; *Provided, however,* That in all applications for license the board of commissioners may grant or refuse the same at their discretion.

1951. Every person obtaining a license to keep a ferry shall provide and keep in good repair a good and sufficient boat for the safe conveyance of persons and property, and when the river or creek over which the ferry is kept is passable, shall, with a sufficient number of hands to work and manage the boat, give due attendance from daylight in the morning until dark in the evening; and shall, moreover, at any hour in the night or day that the creek or river can be passed, when called upon for that purpose, convey the United States mail or other public express across said ferry; and if any person having obtained a license as aforesaid shall fail or neglect to perform the duties herein enjoined, or any of them, the person so offending shall forfeit and pay for every such offense a sum not exceeding five dollars, to be recovered before any justice of the peace of the proper county, at the suit of any person prosecuting for and making due proof of such failure or neglect; and if any keeper of a ferry as aforesaid shall demand or receive a higher rate or sum for ferriages than shall be allowed by the board of county commissioners of the county wherein such ferry is kept, the person so offending shall forfeit and pay for every such offense a fine not exceeding ten dollars, recoverable before any justice of the peace of the proper county by any person making due proof thereof, to be disposed of as hereinafter provided.

1952. Should the county commissioners refuse to renew the license of a ferryman, he shall be exonerated from the penalties of this chapter by paying into the county treasury, previous to any prosecution having been commenced against him, such sum for the time which may have elapsed between the expiration of his license and the next session of the board of county commissioners as shall bear a ratable proportion to the amount charged for the previous year.

1953. The board of county commissioners, at the same time they grant a license to keep a ferry, shall also fix the rate of ferriages which the ferry keeper may demand and receive for the transportation of persons and property; and it shall be the duty of the clerk of the board of said county commissioners to furnish every person taking out a license to keep a ferry, with a list of the rate of ferriages, which list the ferry keeper shall post at the door of his ferry house, or in some conspicuous place convenient to said ferry.

1954. Every county clerk shall, on the first day of the term of the district court, deliver to the grand jury an accurate list of all persons holding license within his county; and it shall be the duty of the judge to give this chapter in charge to the grand jury, whose duty it shall be to make inquiry and give information of any violation thereof, except in cases where jurisdiction is given to justices of the peace.

1955. [**Unauthorized ferries.**]—If any person shall keep a ferry without being duly authorized, the person so offending shall forfeit and pay a sum not exceeding fifty dollars, to be recovered by indictment.

1956. If any justice of the peace or other officer shall neglect or fail to comply with the requisitions of this chapter, the person so offending shall forfeit and pay for every such offense a sum not exceeding fifty dollars, at the discretion of any court of competent jurisdiction before whom the same may be recovered, for the use of the county.

1957. All actions or suits brought under the provisions of this chapter shall be in the name of the state of Nebraska, and the court taking cognizance thereof shall keep a record of all **fines** and **forfeitures** recovered under the same; and sheriffs, constables, and other officers shall pay all moneys, within thirty days after receiving the same, into the county treasury. Justices of the peace and clerks of courts before whom any fine is recovered shall present an accurate account thereof to the county clerk, on or before the first Monday of July annually; and it shall be the duty of the county clerk to inform against and prosecute all offenders against this statute, especially such offenses as are cognizable before justices of the peace.

1958. Nothing herein contained shall be so construed as to conflict or interfere with any **vested right** heretofore acquired or secured under any law of this state.

Secs. 1959 and 1960. "An act to limit the amount of ferriage to be charged for ferrying footmen." 1871, p. 123. In force April 1.

1959. **[Limit of toll.]**—It shall be unlawful for any person or persons, ferry or transfer company, engaged in ferrying or transferring persons across any river in this state, or any river forming the boundary line thereof, to charge, demand of, or receive from any footman, or foot passengers, more than ten cents for any such ferriage or transfer across any of said rivers.

1960. If any person or persons, or company engaged in the business aforesaid, shall demand, charge, or receive a greater sum than ten cents for such transfer, such person or persons, or company shall incur a **penalty** of ten dollars for such offense, which penalty may be collected by civil action before a justice of the peace whenever service of process can be made; one-half of the said penalty shall be for the use of the plaintiff in any such action, and the other half shall be paid to the county treasurer, and constitute a part of the school fund of such county.

CHAPTER 19.—HOMESTEADS.

Secs. 1961 to 1976. "An act to provide for the selection and disposition of **homesteads** and to exempt the same from judgment liens, and from attachment levy or sale upon execution or other process." 1879, p. 57. In force September 1. (Sec. 17 repealed 1889, p. 473; sec. 18, 1887, p. 33.)

1961. A homestead not exceeding in **value** $2,000, consisting of the dwelling house in which the claimant resides, and its appurtenances, and the land on which the same is situated, not exceeding 160 acres of land, to be selected by the owner thereof, and not in any incorporated city or village, or instead thereof, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, shall be **exempt** from judgment liens, and from execution or forced sale, except as in this chapter provided.

Applicable to chapter. Homestead law in force when a contract is entered into is the law applicable to such contract. Legislature cannot diminish these rights. **17,** 620 (20 N. W., 29; 24 N. W., 277); **17,** 533 (23 N. W., 506); **28,** 189 (44 N. W., 187). United States homestead is not liable for any debt contracted prior to the issuing of the patent therefor. **10,** 602 (7 N. W., 329); **13,** 4 (12 N. W., 830); **18,** 444 (25 N. W., 580). Claimant need not have the legal title. **17,** 532 (23 N. W., 509). Exempt property is not susceptible of fraudulent alienation. **8,** 176; **13,** 405 (14 N. W., 393). A tenant in common is not entitled to a right of homestead upon the common property against a judgment of partition thereof. **18,** 586 (26 N. W., 390). Leasing barn does not deprive property of its character as a homestead. **12,** 532 (12 N. W., 8). Homestead cannot be mortgaged without signature of wife. **26,** 177 (41 N. W., 996). Wife is the second head of the family, and homestead cannot be divested without her consent. **25,** 175 (41 N. W., 117). Title at death of husband vests in widow, and her removal from premises does not affect their exempt character. **27,** 36 (42 N. W., 741). Widow vested with life estate in homestead, though temporarily absent during husband's life. **27,** 239 (42 N. W., 1041). Cited, and party held to be head of a family and entitled to his homestead exemption. **11,** 390 (9 N. W., 555). Where a husband waives homestead right, and procures a purchaser at judicial sale, for a judgment not otherwise a lien on the homestead, rendered on a debt incurred while law of 1867 was in force, such purchaser acquires good title. **29,** 310 (45 N. W., 638). Judgment lien attaches to homestead, but cannot be made effective while premises occupied as homestead. **4,** 498; **5,** 49. That the claimant is for some temporary reason not residing on homestead at date of judgment does not make judgment a lien thereon. **17,** 368 (22 N. W., 767). Must be owned and occupied as a homestead at the time judgment recovered, else judgment becomes a lien on the property, in satisfaction of which the homestead may be sold. **4,** 497.

1962. If the claimant be married, the **homestead** may be **selected** from the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married, but is the head of a family, within the meaning of section fifteen, the homestead may be selected from any of his or her property.

1963. The homestead is **subject to execution** or forced sale in satisfaction of judgments obtained: *First*—On debts secured by mechanics', laborers' or vendors' liens upon the premises. *Second*—On debts secured by mortgages upon the premises, executed and acknowledged by both husband and wife, or an unmarried claimant.

May waive right by executing mortgage. **3,** 176. Third party who has purchased homestead and assumed a mortgage upon it, cannot plead its invalidity as a defense. **10,** 324 (6 N. W., 369). Securities will not be marshalled so as to impose a greater burden on the homestead. **28,** 586 (44 N. W., 871).

1964. The homestead of a married person cannot be **conveyed** or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

What is proper execution. **23,** 590 (37 N. W., 485). Both husband and wife must sign. **20,** 109 (29 N. W., 254). In deed from husband to wife, wife need not join. **21,** 672 (33 N. W., 208). This section is constitutional and valid. **13,** 122 (12 N. W., 831). See **19,** 211 (27 N. W., 117).

1965. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 3 is levied upon the lands or tenements of a head of a family, such **head of a family** may **notify** the **officer** at the time of making the levy of what he regards as his homestead, with a description thereof, within the limits above prescribed, and the remainder alone shall be subject to such levy, except as otherwise provided in this chapter. The judgment creditor may thereupon apply to the district court in the county in which the homestead is situated, for the appointment of persons to appraise the value thereof.

1966. The **application** must be made upon a verified **petition** showing: 1. The fact that an execution has been levied upon property which has been claimed as a homestead. 2. The name of the claimant. 3. That the value of the homestead exceeds the amount of the homestead exemption.

1967. The **petition** must be **filed** with the clerk of the district court, and a copy thereof, with notice of the time and place of hearing, be served upon the claimant at least ten days before the hearing.

1968. At the **hearing**, the court, upon proof of the **service** of such petition and notice, and of the facts stated in the petition, shall appoint three disinterested residents of the county to **appraise** the value of the homestead, who must take an **oath** to impartially appraise the same. They must view the premises, and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

1969. Within ten days, or less, if the court so order, from the time of their appointment, they must make to the court a **report** in writing, showing the appraised value, and their determination upon the matter of a division of the land claimed.

1970. If from the report it appears that the **land** claimed can be **divided** without material injury, the court shall, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, not exceeding the quantity prescribed in section one of this chapter [1961] as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

1971. If from the report it appears to the court that the **land** claimed exceeds in value the amount of the homestead exemption, and that it **cannot be divided,** he must make an order directing its **sale** under the execution; but at such sale no bid must be received unless it exceeds the amount of the homestead exemption.

1972. If the sale is made, the **proceeds** thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

1973. The **money paid** to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the claimant which the law gives to the homestead.

1974. The **appraisers** shall receive the same **fees** as jurors in civil cases in the district court, which, with all other costs of these proceedings, must be paid by the execution creditor, in the first instance, but in the cases provided for in sections ten and eleven [1970–1] the amount paid must be added as costs on execution, and collected accordingly.

1975. The phrase "**head of a family,**" as used in this chapter, includes within its meaning: *First*—The husband, when the claimant is a married person. *Second*—Every person who has residing on the premises with him or her, and under his care and maintenance, either: 1. His or her minor child, or the minor child of his or her deceased wife or husband. 2. A minor brother or sister, or the minor child of a deceased brother or sister. 3. A father, mother, grandfather, or grandmother. 4. The father or mother, grandfather or grandmother of a deceased husband or wife. 5. An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

1976. If the homestead be conveyed by the claimant, or sold for the satisfaction of any lien mentioned in section three, the proceeds of such sale, beyond the amount necessary to the satisfaction of such lien, and not exceeding the amount of the homestead exemption, shall be entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the claimant which the law gives to the homestead. And the sale and disposition of one homestead shall not be held to prevent the selection or purchase of another as provided in this chapter.

CHAPTER 20.—ILLEGITIMATE CHILDREN.

Secs. 1977 to 1984. "An act for the maintenance and support of illegitimate children." 1875, p. 53. In force February 25. (Repealing act of 1869, p. 80, as corrected 1870, p. 4).

1977. That any **complaint** made to any justice of the peace in this state by any unmarried woman resident therein, who shall hereafter be delivered of a bastard child, or being pregnant with a child which, if born alive, may be a bastard, accusing on oath or affirmation any person of being the father of said child, the justice shall take such accusation in writing, and thereupon issue his **warrant**, directed to the sheriff, coroner, or constable of any county of this state, commanding him forthwith to bring such accused person before said justice, to answer to said complaint; and on return of such warrant the justice, in the presence of the accused person, shall examine the complainant under oath respecting the cause of her complaint, and such accused person shall be allowed to ask the complainant, when under oath, any question he may think necessary for his justification; all of which questions and answers, together with every other part of the **examination**, shall be reduced to writing by the justice of the peace, and if, on such examination, the party accused shall pay or secure to be paid to the complainant such sum or sums of money or property as she may agree to receive in full satisfaction, and shall further give **bonds** to the county commissioners of the county in which said complainant shall reside and their successors in office, conditioned to save such county free from all charges toward the maintenance of said child, then and in that case the justice shall **discharge** the party accused out of custody, or [on] his paying the costs of prosecution; *Provided*, That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the justice, who shall thereupon enter a memorandum of the same upon his docket.

This chapter was originally taken from Ohio. Proceedings under this chapter are in the nature of civil proceedings to enforce a civil and moral obligation. The intermarriage of the parties will always be encouraged. 16, 280 (20 N. W., 383). Should be conducted in the name of the prosecutrix, if she refuse, then in the name of the state. 9, 129 (1 N. W., 1008). Admissibility of evidence outside period of gestation. 20, 374 (30 N. W., 258). Action commenced more than four years after birth of child not barred where evidence shows that accused is putative father and that mother has continued to insist on his supporting it. Expenses prior to an action considerably delayed will not be allowed. 24, 781 (40 N. W., 308). Hearsay evidence as to prior marriage sufficient, when not objected to, to prevent the court from discharging the accused on a writ of *habeas corpus*. 11, 99 (7 N. W., 755).

1978. That, when any woman has a bastard child, and neglects to bring a suit for its maintenance, or commences a suit and fails to prosecute to final judgment, the county **commissioners** in any county interested in the support of any such bastard child, where sufficient security is not offered to save the county from expense, may bring a **suit** in behalf of the county against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child.

Where mother dies, suit may be revived in name of county. 28, 227 (44 N.W., 184). Sureties are bound though recognizance is in form a bond and not entered on docket. 18, 536 (26 N. W., 357).

1979. That in case such accused person does not comply with the provisions in the first section of this act contained, the justice to whom such complaint was made shall bind such person in a **recognizance** to appear at the next term of the district court, with sufficient security, in a sum not less than five hundred dollars, nor more than two thousand dollars, for the benefit of the county in which such bastard child shall be born, to answer such accusation, and to abide the order of the court thereon, and on neglect or refusal to find such security, the justice shall cause him to be committed to the jail of the county, there to be held to answer such complaint.

County judge has jurisdiction to recognize defendant. 24, 36-7 (37 N. W., 943). Recognizance valid against security though not recorded on district court docket. 24, 104-5 (38 N. W., 29).

1980. That if, at the time of such court, the woman be not delivered, or be unable to attend, the court shall order the **renewal of** the bonds of **recognizance,** that the accused person shall be forthcoming at the next court after the birth of the child, at which the mother of said child shall be able to attend; and the continuance of such bonds shall be entered by order of said court unless the security object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose.

1981. That when such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury; and at the **trial** of such issue the examination before the justice shall be given in **evidence,** and the mother of the bastard child shall be admitted as a competent witness, and her credibility be left to the jury; *Provided, always,* That no woman shall be admitted as a witness as aforesaid who has been convicted of any crime which would by law disqualify her from being a witness in any other case; and on the trial of the issue the jury shall, in behalf of the man accused, take into consideration any want of credibility in the mother of the bastard child; also any variations in her testimony before the justice and that before the jury; and also any other confession of her, at any time, which does not agree with her testimony, or any other pleas or proofs made and produced on behalf of such accused person.

Error cannot be assigned in favor of defendant on ruling of trial court that prosecutrix should not turn face of child so that jury could observe it. Prosecuting attorney may, in arguing, refer to failure of accused to deny the charge. Testimony as to alleged statements of prosecutrix, that another than defendant was father of child, properly excluded on cross-examination as not based on direct. Prosecution properly maintained in county where mother resides, though she was temporarily staying in another county when child was born. 24, 37 (37 N. W., 943). The written testimony of the mother before the justice is proper evidence. 28, 229 (44 N. W., 184). Mother a competent witness. 21, 179 (31 N. W., 669). Mother permitted to hold child in her arms during trial. 19, 269 (27 N. W., 113).

1982. That in case the jury find the **defendant guilty,** or such accused person before the trial shall confess in court that the accusation is true, he shall be judged the reputed father of said child, and shall stand charged with the maintenance thereof in such a sum or sums as the court may order and direct, with payments of costs of prosecution, and the court shall require the reputed father to give **security** to perform the aforesaid order, and in case the said reputed father shall neglect or refuse to give security as aforesaid, and pay the costs of prosecution, he shall be committed to the jail of the county, to remain until he shall comply with the order of the court.

Failure to adjudge the defendant the reputed father of the child, error. 6, 309. The sum charged against the putative father for the support of the child is not a debt in the sense in which that word is used in the constitution. 13, 194 (13 N. W., 174). Provision for imprisonment constitutional. 24, 69 (38 N. W., 28).

1983. When any defendant to a complaint of bastardy shall have been committed to jail on neglect or refusal to find the security required by the third section of this act [1979], or on failure of such defendant to renew his recognizance as required by the fourth section of this act, it shall be lawful for any judge of the district court or probate judge within his county to admit such defendant to **bail** by recognizing him in such sum and with such securities as such judge shall deem proper, conditioned for the appearance of such defendant before the proper court to answer the complaint made, under which he stands charged; and for taking such bail the said judge may by his special warrant, under his hand, require the sheriff or jailer to bring such defendant before him at the court house of the proper county, at such time as in such warrant the judge may direct; *Provided*, That in fixing the amount of bail, the judge admitting the same shall be governed in the amount and quality of bail required by the third section of this act.

1984. The warrant authorized to be issued by this act against any accused person shall authorize and empower the officer to which it is directed to pursue and take the accused person in any county in this state, and to bring said accused person before the justice who issued said warrant, to answer the complaint made against him.

CHAPTER 21.—ILLUMINATING OILS.

Secs. 1985 to 1990. "An act to regulate the sale of illuminating oils." 1875, p. 27. In force February 27.

1985. That it shall be unlawful for any person or persons to offer for sale, for illuminating purpose, as agent, or otherwise, any mineral or petroleum oil, or any **oil**, fluid, or substance which is a product of petroleum, or into which petroleum or any product of petroleum enters, or is found as a constituent element, until after he or they have **tested** the same in the manner following, to-wit: By taking not less than half a pint of the oil, fluid, or substance to be tested, and placing the same in a small vessel, in which there is no other substance, of such dimensions that the surface of the oil, fluid, or substance shall not exceed four square inches in area, and placing a Fahrenheit's thermometer in said oil, fluid, or substance in said vessel, in such manner that the thermometer will indicate the temperature of the oil, fluid, or substance being tested, which shall then be gradually heated at a rate of not less than two degrees per minute, Fahrenheit, to a temperature at which said oil, fluid or substance will emit a gas or vapor that will ignite by bringing the flame of a lighted match or other burning taper in contact with the surface of the article being tested, with such frequency, and in such a manner as to ascertain the exact temperature by said thermometer at which said fluid, oil, or substance will emit a gas that will ignite, and if it will emit a gas or vapor that will ignite at any temperature below one hundred and ten degrees Fahrenheit, then it is hereby declared to be dangerous, and it shall be unlawful to sell or offer the same for sale.

1986. That any person or persons who shall **offer for sale** for illuminating purposes, any **oil**, fluid, or substance mentioned in the first section of this act, until after he or they have tested, or caused the same to be tested, as prescribed by this act, or who shall offer for sale for illuminating purposes any of said articles that will emit a gas or vapor that will ignite at any temperature **below** one hundred and ten degrees Fahrenheit, under the **test** prescribed in this act, he or they shall be guilty of a misdemeanor, and on conviction thereof shall be **fined** in any sum not less than one hundred dollars, or imprisoned in the jail of the county not exceeding twenty days, or both, at the discretion of the court, and shall pay the costs of the prosecution.

1987. That if any person or persons, manufacturer, refiner, or wholesale **dealer** of any oil, fluid, or substance mentioned in the first section of this act, as agent or otherwise, shall **sell** for illuminating purposes any oil, fluid, or substance mentioned in said section that will emit a gas or vapor that will ignite at any temperature **under** one hundred and ten degrees Fahrenheit, under the **test** in this act prescribed, he or they shall be guilty of a misdemeanor, and on conviction thereof shall be **fined** in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding twenty days, or both, at the discretion of the court trying the case, and shall pay the costs of prosecution.

1988. That if any person or **persons** shall **sell** for illuminating purposes, and in a quantity of less than one barrel at a single sale, any oil, fluid, or substance that will emit a gas or vapor that will ignite at any temperature **below** one hundred and ten degrees Fahrenheit under the **test** prescribed by this act, he or they shall be **guilty** of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five nor more than two hundred dollars, or imprisonment in the jail of the county not exceeding ten days, or both, at the discretion of the court, and shall pay the costs of prosecution.

1989. That if any person shall sustain damage to his property or injury to his person, by reason of a violation of any of the provisions of this act by another person, the person guilty of violation shall be liable to the person injured for all damages sustained thereby, and in case any person violating the provisions of this act shall, by such violation, cause the death of another, he shall be guilty of manslaughter, and on conviction thereof shall be punished according to the provisions of the section of the criminal statute defining that crime.

1990. That any and all contracts made in violation of the provision of this act are hereby declared to be void, and the vendor may return the oil, fluid, or substance purchased, at the expense of the vendor, and recover from the vendor all that he has paid therefor, including all charges for transportation, and all other damages resulting from said sale.

Secs. 1991 to 2007. "An act to provide for a state inspector of oils and deputies, and to define their duties and provide fees for the same and prescribe penalties for violation thereof, and to repeal acts and parts of acts in conflict herewith." 1887, p. 515. In force July 1.

1991. All minerals or petroleum oil, or any oil, fluid, or substance which is a product of pretroleum or into which pretroleum or any prodnct of pretroleum enters or is found as a constituent element, whether manufactured in the state or not, shall be inspected as provided in this act, before being offered for sale for consumption for illuminating purposes in the state.

1992. The governor shall appoint a suitable person, resident of this state, who is not interested in manufacturing, dealing, or in vending any of the illuminating oils specified in section one of this act, as state inspector of oils, whose term of office shall be two years from the date of appointment or until his successor shall be appointed and shall qualify. It shall be the duty of said state inspector, or his deputies hereinafter provided for, to examine and test the quality of all such oils offered for sale by any manufacturer, vendor, or dealer, and if upon such testing and examination they shall meet the requirements hereinafter specified, he shall fix his brand or device, viz: "Approved, flash test —— degrees" (inserting the actual flash test), with the date of his official signature upon the package, barrel, or cask containing the same. And to more effectually carry out the provisions of this act, it shall be lawful for any state inspector or his deputies to enter into or upon the premises of any manufacturer of, vendor of, or dealer in said oils, and if any such oils intended for consumption for illuminating purposes within the state shall be there found which should have been inspected, as provided for in this act, and have not been, the inspector shall proceed to test and brand the same. It shall be lawful for any manufacturer, vendor, or dealer to sell oils so tested if they are found to comply with the requirements of this act and are properly branded "Approved," but if such oils so tested shall not meet said requirements, the words "Rejected for illuminating purposes" shall be marked in plain letters on the package, barrel, or cask containing them, and it shall be unlawful for the owner or owners thereof to sell them for illuminating purposes for consumption in this state. If any person shall sell, or offer for sale, such rejected oils for such purposes, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a penalty, in the discretion of the court, in any sum not exceeding three hundered ($300) dollars.

1993. The state inspector provided for in this act is hereby authorized to appoint and station not to exceed five deputies, which deputies are hereby empowered to perform the duties of inspection and shall be liable to the same penalties as the state inspector; *Provided*, That the state inspector may remove any of said deputies for reasonable cause. The state inspector and his deputies shall provide themselves at their own expense with instruments, stencils, brands, and stamps necessary for the proper performance of their duties, and, when called upon for that purpose, they shall promptly, as may be possible, inspect all oils hereinbefore mentioned, and shall reject for illuminating purposes such of them as will emit a combustible vapor at the temperature of one hundred (100) degrees Fahrenheit. The oil tester now used in the state of Ohio, and known as the Foster apparatus, shall be used by the state inspector and his deputies.

1994. Every person appointed as state inspector or deputy inspector, before he enters upon the discharge of his duties of his office, shall take the **oath** or affirmation prescribed by the constitution and laws of this state, and shall file the same in the office of the secretary of state. The state inspector shall execute a **bond** to the state of Nebraska in the sum of twenty thousand ($20,000) dollars, with such surety as shall be approved by the secretary of state, conditioned for the faithful performance herein imposed upon him, which bond shall be for the use of all persons aggrieved by the act or neglect of said inspector, and the same shall be filed with the secretary of state. Each deputy inspector, before he enters upon the duties of his office, shall execute a bond to the state inspector in the sum of five thousand ($5,000) dollars, with such sureties as may be approved by the state inspector. Such bond shall be filed with the state inspector; shall be conditioned for the faithful performance of the duties herein imposed, and shall be for the use of all persons aggrieved by the act or neglect of said deputy inspector.

1995. The state inspector or deputy inspector is entitled to demand and receive from the owner of any oils tested ten (10) cents per barrel for all oil inspected. It shall be the duty of the state inspector and each deputy inspector to keep an accurate **record** of all oils tested and branded by him, which record shall state the date of inspection, the number of packages, barrels, or casks rejected, the number approved, the manufacturer's brand, the name of the person for whom inspected, and the sum of money received for such inspection; and such record shall be open to all persons interested. At the beginning of every month each deputy inspector shall forward to the state inspector, a true copy of such record and all moneys received by him for his inspections. In the month of January of each year the state inspector shall make and deliver to the governor of the state a **report** of the inspection by himself and deputies during the preceding calendar year.

1996. The state inspector shall receive an annual **salary** of two thousand ($2,000) dollars. He shall also be allowed such further sum as he may actually and necessarily expend whether for traveling expenses incurred in the discharge of his duties, or for the proper prosecution of any case of offense arising under the provisions of this act. Each deputy inspector shall be entitled to a salary, payable monthly, of not to exceed one hundred ($100) dollars per month, as herein provided. Each deputy inspector shall also be entitled to and allowed all actual and necessary expenses for railroad, stage, and steamboat fares incurred in the discharge of his duties as such deputy inspector, and for such other sums of money as by the authority of the state inspector he may expend in the prosecutions for offenses arising under the provisions of this act. All salaries and **expenses** provided for in this act shall be paid by the state inspector out of the money received for the inspection of oil; *Provided*, That in case the amount of money received for such inspections according to the provisions of this act shall not be sufficient to pay the salaries and expenses of the state inspector and his deputies as provided herein, the amount of such deficiency shall be deducted from said salaries *pro rata* to each; *Provided, further*, That in case the amount of moneys received for the inspection of oils according to the provisions of this act shall be in excess of the sum required to pay the salaries and expenses of the state inspector and his deputies as provided hereinbefore, the amount of such excess shall be paid into the state treasury for the benefit of the general fund. The state inspector shall render to the state auditor a detailed account of all the receipts and disbursements of his office and shall also incorporate a copy of such report in his annual report to the governor.

1997. [**Violation of Act.**]— Any person or persons, whether vendor, manufacturer, or dealer, who shall sell or attempt to sell to any person in this state any of the illuminating oils hereinbefore mentioned before having the same inspected as provided in this act, shall be deemed guilty of a misdemeanor and shall be subject to a penalty in any sum not exceeding three hundred dollars ($300); and if any manufacturer, vendor, or dealer in any of said illuminating oils shall falsely brand the package, barrel, or cask containing the same for the purpose of deceiving the purchaser thereof in any manner as to the contents of the same, or shall use packages, barrels, or casks having an inspector's brand thereon without having the oil inspected, he or she shall be deemed guilty of a misdemeanor and shall be subject to a penalty in a sum not exceeding three hundred dollars ($300) nor less than one hundred ($100) dollars or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court.

1998. [**Same.**]—Any person selling or dealing in the illuminating oils hereinbefore specified, who shall sell or dispose of any empty barrel, cask, or package that has once been used for such oils and been branded by a state or deputy inspector before thoroughly canceling, removing, or effacing the inspection brand on the same shall be guilty of a misdemeanor, and on conviction thereof shall pay a fine of ten dollars ($10) for each barrel, cask, or package thus sold or disposed of.

1999. [**Same.**]—Any person who knowingly uses for illuminating purposes any illuminating oils as hereinbefore specified before the same have been legally inspected and branded "Approved" as required in section one of this act [1991], shall be fined in any sum not exceeding one hundred dollars ($100) nor less than twenty dollars ($20).

2000. No person shall adulterate with paraffine or other substance for the purpose of sale or for use any of the illuminating oils specified in this act in such a manner as to render them dangerous to use, nor shall any person sell or offer to sell or knowingly use for illuminating purposes any such adulterated **oils** which by reason of being **adulterated** will emit a combustible vapor at a less temperature than one hundred (100) degrees Fahrenheit thermometer; *Provided*, That such vaporizing point shall be determined in the manner and with the instrument as hereinbefore provided in section three of this act. Any person violating the provisions of this section shall be deemed guilty of a **misdemeanor**, and shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars ($500), or by both such fine and imprisonment, in the discretion of the court.

2001. **Gas** or **vapor** from the petroleum or any of the products of the petroleum may be used for illuminating purposes when the oils from which said gas or vapor is generated are contained in closed reservoirs outside of the building lighted by said gas or vapor. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars ($300), or by both such fine and imprisonment, at the discretion of the court; *Provided*, That nothing in this act shall be construed as to the use in street lamps of the lighter products of petroleum, such as gasoline, benzine, benzole, and naphtha.

2002. Whoever shall knowingly sell or cause to be sold any of the illuminating oils as specified in this act which are below one hundred (100) degrees Fahrenheit, when tested as provided for in section three of this act, shall be **liable to** any **person purchasing** any of such oil, or any person injured thereby, for any damages to person or property arising from any explosion thereof.

2003. **No state** inspector or deputy inspector shall, while in office, **traffic,** directly or indirectly, **in** any of the **oils** which he has been appointed to inspect, and in case of a violation of this provision the offender shall be fined in any sum not exceeding five hundred dollars ($500) and be removed from his position.

2004. It shall be the duty of the state **inspector** or any deputy inspector who shall know of the violation of any of the provisions of this act, to enter **complaint** before any court of competetent jurisdiction against any person so offending, and in case the state inspector or deputy inspector having knowledge of such violation shall neglect to enter complaint, he shall be deemed guilty of a misdemeanor, and upon conviction shall be removed from his position.

2005. It shall be the duty of all **county attorneys** to represent and prosecute, on behalf of the people within their respective counties, all cases of offenses arising under the provision of this act.

2006. All **questions** of dispute arising between the deputy inspector and manufacturer and dealers shall be **submitted to** the state **inspector** for his decision, and his decision shall be final.

2007. It shall be the duty of the **governor** to **remove** from office any state inspector who shall prove himself to be either unfaithful or incompetent in the discharge of his duties.

CHAPTER 22.—INNS.

Secs. 2008 to 2010. "An act concerning inn holders or **hotel keepers** and their guests." 1875, p. 157. In force February 19.

2008. That hereafter every **landlord** or keeper of a public inn or hotel in this state, who shall constantly have in his inn or hotel an iron safe in good order, and suitable for the **safe custody** of money, jewelry, or other valuable articles belonging to his guests or customers, shall keep posted conspicuously at the office and in other public rooms or halls of his inn or hotel notices to his guests or customers that they must leave their money, jewelry, and other valuables with the landlord, his agent or clerk, for the safe keeping, that he may make safe deposits of the same in the place provided for that purpose.

A sleeping car company is an inn keeper, and, as such, liable for loss of valuables, etc. Guest and lodger defined. **28**, 239 (44 N. W., 226).

2009. That such **landlord,** hotel or inn keeper as shall comply with the requirements of the first section of this act shall not be **liable** for any money, jewelry, or other valuables of gold or silver or rare or precious stones that may be lost, if the same is not delivered to said landlord, hotel or inn keeper, his agent or clerk, for deposit, unless such loss shall occur by the hand or through the negligence of the landlord, or by a clerk or servant employed by him in such hotel or inn; *Provided,* That nothing herein contained shall apply to such amount of money and valuables as is usual, common, and prudent for any such guest to retain in his room or about his person.

2010. Any person who shall put up at any hotel or inn and shall procure any food, entertainment, or accommodation without paying therefor, except where **credit** is given by express agreement, with intent to cheat or defraud the owner or keeper thereof out of the pay for the same; or who, with intent to cheat or defraud such owner or keeper out of the pay therefor, shall obtain credit at any hotel or inn for such food, entertainment, or accommodation by means of any **false show of baggage** or effects brought thereto; or who shall with such intent remove, or cause to be removed, any baggage or effects from any hotel or inn while there is a lien existing thereon for the proper charges due from him for fare and board furnished therein, shall be punished by imprisonment not exceeding three months, or by a fine not exceeding one hundred dollars.

Secs. 2011 to 2020. "An act for the security of guests and lodgers in hotels against injuries from fires." 1883, p. 231. In force February 24.

2011. It is hereby made the duty of every keeper or owner of every hotel or lodging house in this state, of over two stories in height, to provide and securely fasten in every lodging room above the second story which has an outside window, and is used for the accommodation of guests or employees, a rope or rope ladder for the **escape** of the lodgers therein, in case of **fire,** of at least one inch in diameter, which shall be securely fastened within such room, as near a window as practicable, and of sufficient length to reach therefrom to the ground on the outside of such hotel or lodging house, and made of strong material and as secure against becoming inflamed as practicable. Such rope or rope ladder shall be kept in good repair and condition. In lieu of a rope or rope ladder there may be substituted any other appliance that may be deemed of equal or greater utility by the fire department, or such other authority as may have the control of fire regulations in the city or town where such hotel or lodging house is located; but such appliance shall, in all cases, be so constructed as to be under the control and management of any lodger in such room.

2012. The owner or owners of every hotel or lodging house in this state, over three stories in height, shall provide, without delay, such hotel or lodging house with permanent iron **balconies**, with iron stairs leading from one balcony to the other, to be placed at the end of each hall above the third story, in case such hotel is over one hundred feet in length, and in other cases such number as may be directed by the fire department, or such other authority as may have the control of fire regulations in any city or town where such hotel or lodging house is located. Such balconies and iron stairs shall be constructed at the expense of the owner of such hotel or lodging house.

2013. It shall be the duty of every such proprietor or keeper of any hotel or lodging house to post **notices** in every such room of such hotel or lodging house, calling attention to the fact that this act has been complied with, and the part of such room where such coil of rope or rope ladder is fastened.

2014. Any **violation** of any of the provisions of this act hereinbefore contained shall be deemed a misdemeanor and indictable as such; and any person convicted thereof shall be punished by a **fine** of not less than one hundred dollars nor more than five hundred dollars, and costs of prosecution, and imprisoned until such fine and costs are paid.

2015. In **hotels** or lodging houses containing more than fifty rooms, and being four or more stories high, the proprietor or lessee of each hotel or lodging house shall employ and keep at least one competent **watchman,** whose duty it shall be to keep watch and guard in such hotel or lodging house against fire, and to give warning in case a fire should break out. Such watchman shall be on duty between the hours of nine o'clock P. M. and six o'clock A. M., and in case of fire he shall instantly awaken each guest and all other persons therein, and inform them of such fire. A large alarm bell or gong shall be placed on each floor or story, to be used to alarm the inmates of such hotel or lodging house in case of fire therein. It shall be the duty of every proprietor, or keeper of such hotel or lodging house, in case of fire therein to give notice of same to all guests and inmates thereof at once, and to do all in their power to save such guests and inmates.

2016. Should such **watchman leave** his **post** of duty in such hotel or lodging house for more than fifteen minutes at any one time during the hours specified for him to be on watch, or if he shall **sleep** while on duty, or if he shall fail to awaken the persons sleeping in such hotel or lodging house, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be **punished** by imprisonment in the county jail not exceeding one year, or by a fine of not less than fifty dollars nor more than five hundred dollars.

2017. Every **proprietor** of such hotel or lodging house who shall **fail to comply** with the requirements of section five of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be **punished** in the same manner as is provided in section four of this chapter [2014].

2018. This act shall be given in charge to the **grand jury** at each session. And they shall make due inquiry and indict and bring to trial all parties found guilty of violating any of its provisions.

2019. All **fines** imposed or collected for any violation of the provisions of this act shall be paid to the treasurer of the county where such offense is committed for the use and benefit of the common school fund.

2020. All hotels or lodging houses hereafter constructed in this state over two stories in height and over one hundred feet in length shall be constructed so that there shall be at least **two stairways** for the use of the guests leading from the ground floor to the uppermost story. And all out doors shall be so hung that they shall open on the outside instead of the inside of such hotel.

CHAPTER 23.—INTEREST.

Secs. 2021 to 2031. "An act to amend chapter 34, General Statutes (being chapter 28 of Revised Statutes of 1866), entitled 'Interest.'" 1879, p. 13. In force June 1.

2021. Any **rate of interest** which may be agreed upon, not exceeding ten dollars per year upon one hundred dollars, shall be valid upon any loan or forbearance of money, goods, or things in action; which rate of interest so agreed upon may be taken yearly, or for any shorter period, or in advance, if so expressly agreed.

Where the full legal rate is contracted for in coupons, interest will not be allowed on them. **25,** 102 (41 N. W., 130); modifying **23,** 536 (37 N. W., 265). But where interest on coupon and on original debt does not exceed ten per cent it can be recovered. **28,** 358 (44 N. W., 451). Interest on interest will not be enforced. **23,** 539 (41 N. W., 130; 37 N. W., 265). Note drew interest at the rate of ten per cent from date until maturity, and if not paid at maturity the principal was to draw interest at the rate of twenty-four per cent per annum from maturity until paid. Held a penalty and not usurious. **14,** 433 (16 N. W., 436). Holder of note calling for twelve per cent, which was the legal rate at its date, entitled to that rate though reduced before maturity; but not to interest on coupons. **27,** 648–9 (43 N. W., 405). In payments interest should be first deducted. **4,** 199. See **4,** 193.

2022. Interest upon the loan or forbearance of money, goods, or things in action shall be at the **rate** of seven dollars per year upon one hundred dollars, unless a greater rate, not exceeding ten per cent per annum, be contracted for by the parties.

2023. **Interest on** all **decrees** and judgments for the payment of money shall be from the date of the rendition thereof at the rate of seven dollars upon each one hundred dollars annually until the same shall be paid; *Provided,* That if said judgment or decree shall be founded upon any contract, either verbal or written, by the terms of which a greater rate of interest, not exceeding the amount allowed by law, than seven per centum shall have been agreed upon, the rate of interest upon such judgment or decree shall be the same as provided for by the terms of the contract upon which the same was founded.

15, 326 (18 N. W., 79).

2024. **On money due** on any instrument in writing, or on settlement of the account from the day the balance shall be agreed upon, on money received to the use of another, and retained without the owner's consent, express or implied, from the receipt thereof, and on money loaned or due, and withheld by unreasonable delay of payment, interest shall be allowed at the rate of seven per cent per annum. Unsettled accounts between parties shall bear interest after six months from the date of the last item thereof.

This applies to an account running for several years. **16,** 58 (20 N. W., 12). In an action on executor's bond, interest on amount due should be seven per cent. **24,** 262 (38 N. W., 750); **10,** 137 (4 N. W., 942).

2025. If a **greater rate** of interest than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore, be void; but if in any action on such contract proof be made that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the plaintiff shall only recover the principal, without interest, and the defendant shall recover costs; and if interest shall have been paid thereon, judgment shall be for the principal, deducting interest paid; *Provided,* The acts and dealings of an **agent** in loaning money shall bind the principal, and in all cases where there is illegal interest by the transaction of the agent, the principal will be held thereby as if he had done the same in person. Where the same person acts as agent for the borrower who obtains the money from the lender, he shall be deemed to be the agent of the loaner also.

Usury defined. **10,** 541 (7 N. W., 289). Burden of proving usury is on him who pleads it. But when usury is proved, the holder, to avoid it, must show that he is a *bona fide* purchaser before maturity. In case stated, person negotiating loan was held agent of lender and not of borrower, notwithstanding a recital in the application to the contrary. **11,** 487 (9 N. W., 650). Plea of usury is not such a set-off or counter-claim as can be retained and tried after action is dismissed by plaintiff. **12,** 505 (11 N. W., 753). Where borrower goes into a court of equity to obtain relief from usurious contract, he must tender principal and lawful interest. **24,** 82 (37 N. W., 941). Negotiable promissory note in hands of *bona fide* purchaser without notice before due is not subject to defense of usury. And a mortgage securing such a note is discharged of all equities which may exist between the original parties. **14,** 416 (16 N. W., 471). Defense of usury cannot be set up against an innocent purchaser before maturity. **9,** 228 (2 N. W., 339). Defense of usury is personal to the borrower and cannot be set up by mere purchaser of equity of redemption. **27,** 404 (43 N. W., 178). Where usury is shown in original transaction, burden is upon holder of notes to show that he is a *bona fide* purchaser. Payments of interest on usurious loan will be applied to principal. **24,** 633 (39 N. W., 786). Not necessary to state rate of interest in note. Surety may plead. **7,** 58. Where legal rate charged, contract not tainted with usury if a greater than legal interest charged after debt matures. **9,** 454 (4 N. W., 51). When a legal rate of interest is agreed upon, and the maker afterwards agrees to pay a greater rate, such agreement does not affect the first agreement. **4,** 207. It is immaterial in what form the extra charge is made, whether it is taken as a gift, etc., or straight per cent. **3,** 259; **4,** 205; **6,** 154. Every subsequent security given for a loan originally usurious, however remote or often renewed, is usurious, and court will apply all payments of interest upon such usurious loan as a payment, *pro tanto*, of the principal. **11,** 465 (9 N. W., 648). Contract made for legal rate to second party who has note made to third party, taking a less sum in cash than the contract called for, not usury. **9,** 15 (2 N. W., 353). Where agent of lender exacts bonus or commission in addition to lawful interest, contract is usurious. **5,** 263; **6,** 154; **8,** 426; **12,** 189 (10 N. W., 698); **13,** 158 (12 N. W., 916). Employer takes usurious contract subject to all instrumentalities employed by his agent in its consummation. **14,** 94 (15 N. W., 214). Where borrower agrees to pay agent a stipulated sum for negotiating a loan for him of which principal is ignorant, contract not tainted with usury. **3,** 260; **24,** 817 (40 N. W., 415); **27,** 880 (44 N. W., 41). "Costs;" this means costs of the whole action. **17,** 307 (22 N. W., 565). Stipulation in a promissory note for "attorney's fee" is void. **11,** 96 (7 N. W., 857); **11,** 399 (9 N. W., 475). See **8,** 50; **27,** 269 (42 N. W., 116).

2026. Any person charged with taking **illegal interest** may be required to answer touching the same, on oath, in any civil proceeding.

2027. Relief to a complain[an]t in case of an usurious loan may be given without payment or **tender** by him of the principal sum.

2028. Any officer or agent of a person or a corporation, whether interested or not, may be summoned as **witness** in any action for usury against such person or corporation, and required to **disclose** all the **facts** of the case, but the testimony of such witness, or the answer of the party as required in section 6 [2026], shall not be used against such witness or party in any criminal prosecution for perjury.

2029. When in any law, or in any instrument in writing specifying a **rate** of interest, no period of time is mentioned for which such rate is to be calculated, it shall be deemed to be by the year.

2030. All **warrants** issued by the proper authorities of the state, county, city, town, or other municipal subdivision less than a county, shall **draw interest** from and after the date of their presentation for payment at the rate of seven per cent per annum, and all bonds issued by any county, city, township, precinct, or school district, shall not draw interest at a rate exceeding eight per cent per annum.

2031. The rate of interest fixed by this chapter shall not affect **interest on** purchase money of **school,** university, and agricultural college **lands,** or on lands delinquent or sold for the non-payment of **taxes.**

CHAPTER 24.—IRRIGATION.

ARTICLE I.—WATER RIGHTS.

SECS. 2032 to 2061. "An act to provide for water rights and irrigation, and to regulate the right to the use of water for agricultural and manufacturing purposes, and to repeal sections 158 and 159 of chapter 16 of the Compiled Statutes of 1887, entitled 'Corporations.'" 1889, p. 503. In force March 27.

2032. The right of the use of **running water,** flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation by any person or persons, company, or corporation organized under the laws of the state of Nebraska; *Provided,* That in all streams not more than fifty feet in width the rights of the riparian proprietors are not affected by the provisions of this act.

2033. The appropriation must be for some **useful** or beneficial **purpose,** and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

2034. No tract of **land** shall be **crossed** by more than one ditch, canal, or lateral without the written **consent** and agreement **of** the **owner** thereof, if the first ditch, canal, or lateral can be made to answer the purpose for which the second is desired or intended.

2035. All **ditches,** canals, or laterals used for the purpose of irrigation shall be **exempt from** all **taxation,** whether for state, county, or municipal purposes.

2036. The person, company, or corporation entitled to the use may **change** the place of diversion if others are not injured by such change, and may **extend** the ditch, flume, or aqueduct by which the diversion is made to places beyond that where the first use was made.

2037. The **water appropriated** from a river or stream shall not be turned or permitted to run into the waters or channel of any other river or stream than that from which it is taken or appropriated.

2038. As between appropriators the one **first in time** is first in right.

2039. A person, company, or corporation desiring to appropriate water must post a **notice** in writing in a conspicuous place at the point of the intended diversion, stating therein: 1st. That he, they, or it claims the water there flowing to the extent of (giving the number) inches, measured under a four inch pressure, and accurately describing the point of diversion. 2d. The purpose for which he, they, or it claim it and the place of intended use. 3d. The means by which he, they, or it intend to divert it, and the size of the flume, ditch, pipe, or aqueduct in which it is intended to divert it. A copy of the notice must within ten days after it is posted be recorded in the office of the county clerk of the county in which it is posted.

2040. Within sixty days after the notice is posted the claimant must **commence** the excavation or **construction** of the works in which it is intended to divert the water, and must prosecute the work diligently and uninterruptedly to completion unless temporarily interrupted by snow or rain.

2041. By **completion** is meant conducting the water to the place of intended use.

2042. By compliance with the above rules, the claimant's **right to** the **use** of water relates back to the time the notice was posted.

2043. A **failure to comply** with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies herewith except as provided in the next section.

2044. All **ditches**, canals, and other works **heretofore made**, constructed, or provided, by means of which the waters of any stream have been diverted and applied to any beneficial use, must be taken to have secured the right to the waters claimed to the extent of the quantity which said works are capable of conducting and not exceeding the quantity claimed without regard to or compliance with the requirements of this chapter.

2045. [**Proceedings to perfect rights.**]—Persons who have heretofore claimed the right to water and who have not constructed works in which to divert it, and who have not diverted it nor applied it to some useful purpose, must, after this title takes effect and within ninety days thereafter, proceed as in this title provided, or their right ceases.

2046. The county **clerk** of each county must keep a **book** in which he must **record** the **notices** provided for in this title.

ARTICLE II.—RIGHT OF WAY FOR DITCHES.

2047. All **persons**, companies, and corporations, owning or claiming any land situated on the banks or in the vicinity of any stream are **entitled to** the **use** of the waters of such stream for the purpose of irrigating the land so held or claimed.

2048. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal, or other conduit on his own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owner or claimants are entitled to a **right of way** through the lands of others for the purpose of irrigation; *Provided*, That in the making, constructing, keeping up, and maintenance of such ditch, canal, or conduit through the lands of others, the person, company, or corporation proceeding under this section, and those succeeding to the interests of such persons, company, or corporation, must keep such ditch, canal, or conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflowing thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

2049. In case of the refusal of the owners or claimants of any land through which such ditch, canal, or other works are proposed to be made or constructed to allow the passage thereof, the person, company, or corporations desiring the **right of way** may present to the county judge of the county in which said lands are situated, a petition describing the lands to be crossed, the size of the ditch, canal, or works, the quantity of land which is required to be taken, and setting forth the names of the owners or parties interested in the lands to be crossed, and praying for the appointment of five **appraisers**, disinterested freeholders of said county, to ascertain the compensation to be made to such owners or parties interested. Upon the filing of said petition the county judge must give notice by publication in a newspaper of general circulation in said county, if there is such printed in said county, or if there be none, by posting such notice in three (3) of the most public places in the county, one of which must be at the county seat, that at a time and place specified in said notice, said petition will be heard and said appraisers appointed, unless good cause be shown by the parties adversely interested, why the said petition should be denied. Said notice must be published or posted for not less than thirty (30) days prior to the hearing thereof, and the expenses of the publication or posting of the same must be defrayed by the petitioners.

2050. The said **appraisers** must, before entering upon the **duties** of their office, take an **oath** to faithfully and impartially perform the duties as such appraisers, and make a true and just award of the amount of compensation to be paid for the right of way over, and use of the lands to be crossed by such ditch, canal, or other conduit. They must hear the allegations and proofs offered by the respective parties, and after viewing the lands and premises, ascertain and certify the amount of compensation which in their judgment it is just and proper to make to the parties owning or interested in the lands to be crossed for the use of the same, and for damages, if any, on account of injury to other portions of the tract of land of any owner or interested party, after making allowance, and deducting for real and direct benefits which such owner or party interested will derive from the making of such ditch, canal, or other works. The appraisers or a majority of them must subscribe to such certificate, and the same must be filed with the county judge, who upon the payment of the fees therefor shall cause a certified copy to be recorded, together with all the proceedings had, in the office of the county clerk, and upon the payment of the compensation and damages, if any, or the tender thereof to the proper parties, or in the absence of such parties from the county, then upon the deposit of the amount in the county treasury to the credit of the said parties, the persons, company, or corporation petitioners have the right of entry upon and of way for the proposed ditch, canal, or other works; *Provided*, That either party may have the right to **appeal** from such assessment of damages to the district court of the county in which said lands are situated within sixty days after such assessment is filed as aforesaid. And in case of such appeal the decision and finding of the district court shall be transmitted by the clerk thereof duly certified to the county clerk to be filed and recorded in his office. But such appeal shall not delay the prosecution of the work upon said ditch, canal, or works, if such persons, company, or corporation shall first pay or deposit with such county treasurer the amount so assessed by said appraisers such persons, company, or corporation shall in all cases pay the costs of the first assessment; *Provided*, That if on appeal the appellant shall not obtain a more favorable judgment and award than was given by said appraisers, then such appellant shall be adjudged to pay all costs made on such appeal; *Provided further*, That either party may appeal from the decision of the district court to the supreme court of the state, and the money so deposited shall remain in the hands of the county treasurer, until a final decision be had subject to the order of the supreme court.

2051. All persons, companies, and corporations owning or having the passory or other title or right to lands adjacent to any stream, have the **right** to place in the channel of or upon the banks or margins of the same, rams or other machines for the purpose **of raising** the **waters** thereof to a level above the banks, requisite for the flow thereof to and upon the adajcent lands, and the right of way over and across the lands of others for conducting said waters may be acquired in the manner prescribed in the last two sections.

2052. Where the **owners** of any spring or stream or the appropriators thereof desire to **conduct** the **waters** thereof to any lands for purposes of irrigation or to any city or town for the use of the inhabitants thereof, or to any reservoir for the purpose of storing said waters for irrigation purposes, or to any factory, or any distant place with the intent to apply the same to a beneficial use, and to accomplish such object it is necessary to cross with ditches, flumes, or other conduits the lands owned or occupied by others than the owners or appropriators of such spring or stream the **right of way** over and across the land of others for conducting such water and the condemnation of land for reservoirs for storing said waters for irrigation purposes may be acquired in the manner above prescribed.

2053. If the owner of any irrigation ditch or canal requires or deems it necessary to **enlarge** any such **ditch** or canal, such owner shall be permitted to do so on reasonable terms, and in case the said owner of such ditch or canal and the owner or claimant of the lands abutting said ditch or canal cannot agree as to terms for such enlargement, then the **damage,** if any, to the owner or claimant of said lands shall be ascertained in the same manner provided for by the appraisers in sections three (3) and four (4) of this title [2049 and 2050].

2054. If any **corporation** organized under the laws of this state for the purpose of constructing and operating canals for irrigating or water power purposes, or both, **may acquire** a **right of way** over or upon any land for the necessary construction of such canal, including dams, reservoirs, and all necessary adjuncts to said canals in the same manner as provided for persons and companies in this act, and such persons, canal companies, and corporations shall have the same power to occupy state lands with their said canals as is given to railroad corporations by section 105, chapter 16, of the Compiled Statutes of 1887 [526]; and such corporations shall also have power to borrow money, and to mortgage all their property and franchises in the same manner and for the same purposes as railroad corporations. And all the laws applicable to railroad corporations in respect to the borrowing of money, issuing of bonds, and giving of mortgages and the manner of so doing, are hereby declared to be applicable to canal or irrigation corporations.

2055. **Canals** constructed for irrigating or water power purposes, or both, are hereby declared to be **works of internal improvement** and all laws applicable to works of internal improvement are hereby declared to be applicable to such canals.

2056. The **owners** or constructors of ditches, canals, works, or other aqueducts and their successors in interest using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully **keep and maintain** the same, and the embankments, flumes, or other conduits by which such waters are, or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others.

2057. Nothing in this **chapter** contained must be so **construed** as to interfere with or impair the rights to water appropriated and acquired prior to the passage of this chapter. But this reservation in behalf of existing rights does not exempt said appropriators from liability as provided in the last section.

2058. In case the **volume** of water in any stream is **not sufficient** to supply continually the wants for irrigating purposes of the owners or proprietors of land in any district or neighborhood in which customs exist for distributing the waters amongst such owners or proprietors, the waters diverted must in such case be held to be a common right in those accustomed to the participation in the use and enjoyment of such distribution, and such customs must be upheld in all courts as conferring such common right in the same. But this section does not affect any prior vested rights.

2059. In case any person, company, or corporation has constructed a ditch for the purpose of diverting the water of any river, creek, canyon, ravine, or spring, for the purpose of selling the water thereof for irrigating purposes, the owners or cultivators of said land along the line of and covered by said ditch or canal are entitled to and have the **right to** the **use of water from** said **ditch** or canal, for the purpose of irrigating said land, so owned or cultivated in the following order: *First*—All persons through whose land such ditch or canal runs are entitled to the use of the waters thereof in the order of their location along the line of said ditch or canal. *Second*—After those through whose land the ditch or canal runs, those upon either side of the line of the ditch or canal are entitled to the use of the waters thereof, those equally distant from the line of said ditch or canal are entitled to priority in the order of their location along the line of said ditch or canal; *Provided*, That in times of scarcity of water the same shall be equally distributed to the consumers thereof; *Provided*, That the owners or cultivators of such lands pay the usual and customary rates for the use of said water, and whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal, so as to prevent or interfere with the use of water from said ditch or canal by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal; and it is hereby made the duty of the owner or owners of any such ditch or canal to keep the same in good repair, and to cause the water to flow through said ditch or canal to the extent of its capacity, if so much be needed during the entire time that water is necessary for irrigating purposes; *Provided*, That the river, creek, canyon, ravine, or spring, from which the water is taken, furnishes an amount of water sufficient for such purposes, subject to the appropriation of the owner or owners, of such ditch or canal. For a failure to cause the water to flow as aforesaid, the owner or owners, or lessees of any such ditch are personally liable to any one for any damages resulting from such failure, and in addition to such personal liability, such damage is a lien upon such ditch or canal, which lien continues in force until such damages are paid.

2060. No person entitled to the use of water from any such ditch or canal, must, under any circumstances, use more water than good husbandry requires for the crop or crops that he cultivates, and any person using an excess of water is liable to the owner of such ditch or canal for the value of such excess, and in addition thereto, is liable for all such damages sustained by any other person who would have been entitled to the use of such excess of water as fixed by this section.

2061. Any person or persons who shall unlawfully, or without the consent of the owner of any ditch or channel, where it was placed or left to run, or who shuts or opens any ditch, gate, or dam, with intent so to divert any water and thereby deprive any person of the use of the same, or who shall cut, break, or in any way injure any ditch, bank, dike, or flume, or raise any head-gate of any main or lateral ditch, whether he be a water purchaser or not, from the said ditch or lateral, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every offense, be fined in any sum not exceeding fifty dollars ($50), or shall be imprisoned in the county jail not exceeding thirty (30) days, either or both at the discretion of the court, and shall moreover be liable in a civil action to any person injured thereby in crops or otherwise, in three times the actual damage sustained in consequence of any such wrongful act or acts.

CHAPTER 25.—LABOR.

Secs. 2062 to 2072. "An act to provide and continue a bureau of labor and industrial statistics, and define the duties of its officers." 1887, p. 470. In force July 1.

2062. There is hereby created a **bureau of labor** census and industrial statistics, with headquarters in the capitol building, for which stationery, postage, expressage, printing, and facilities for transacting business shall be furnished the same as for other executive departments.

2063. The governor of this state is hereby made **commissioner** of said bureau.

2064. Said commissioner shall have the power to appoint a **deputy** at a salary of fifteen hundred dollars per annum, who, when acting for or instead of said commissioner, shall have and may exercise equal power and authority subject to the approval of the commissioner.

2065. The **duties of** said **commissioner** shall be to collect, collate, and publish statistics and facts relative to manufacturers, industrial classes, and material resources of the state, and especially to examine into the relations between labor and capital, the means of escape from fire and protection of life and health in factories and workshops, mines, and other places of industries, the employment of illegal child labor, the exaction of unlawful hours of labor from any employee, the educational, sanitary, moral, and financial condition of laborers and artisans, the cost of food, fuel, clothing, and building material, the causes of strikes and lockouts, as well as kindred subjects and matters pertaining to the welfare of industrial interests and classes.

2066. The commissioner or his deputy shall have **power** to enter any factory or workshop in which labor is employed, for the purpose of gathering facts and statistics, or of examining the means of escape from fire, and the provisions made for the health and safety of operatives in such factory or workshop; and in case the officer of the bureau shall discover any violations of, or the neglect to comply with the laws in respect to **child labor,** hours of labor for women and children, fire escapes, and similar enactments now or hereafter to be made, he shall notify the owner or occupant of such factory or workshop in writing of the offense or neglect, and if such offense or neglect is not corrected or remedied within thirty days after the service of notice aforesaid, he shall lodge formal complaint with the attorney of the county in which the offense is committed or the neglect occurs, whereupon that officer shall proceed against the offender according to law.

2067. The commissioner or his deputy may **examine hotels** and lodging or boarding houses, for the purpose of discovering whether they are properly equipped with lawful fire escapes; and he may post in any hotel, lodging or boarding house so examined the laws upon this matter, together with his official statement as to whether said laws are fully complied with by said hotel, lodging or boarding house. And any hotel, lodging or boarding house keeper, or other who shall mutilate, destroy, or remove from any building or buildings the said laws or statements so posted, shall, upon conviction, be fined any sum not to exceed fifty dollars ($50) for each and every offense. Whenever any hotel, lodging or boarding house that has been posted as not having complied with the terms of the law in respect to fire escapes shall be properly provided and equipped with lawful fire escapes, and the bureau shall be notified thereof, the commissioner shall at once order a new statement, setting forth that fact, to be posted in said hotel, lodging or boarding house, and the bureau shall keep a record of all buildings so examined and posted.

2068. The commissioner or his deputy may **post** in any factory or workshop examined by him the **laws** now or hereafter to be made in respect to child labor, hours of labor, fire escapes, or others pertaining to the health and safety of artisans or employees, and if the owner, manager, and proprietor of any factory or workshop, or his agent, or any person whomsoever, shall remove, destroy, or mutilate the law so posted, he shall, upon conviction, be fined in any sum not to exceed fifty dollars for each offense.

2069. The said **commissioner** shall **have power** to prescribe blank forms and transmit them to employers, which shall be filled out clearly and completely under oath, by the person or persons to whom they are sent, with the facts, **statistics,** and statements asked for, and returned to him within such reasonable time as he may fix. In case any owner or occupant, or his agent, shall refuse to admit any officer of said bureau to his workshop or factory, when open or in operation, he shall forfeit the sum of ten dollars for each and every offense, and if he shall, through his agent or otherwise, neglect, fail, or refuse to fill out the said blank forms, and verify and return them as required, he shall forfeit the sum of ten dollars for each and every day said blank may be so delayed beyond the time fixed by the commissioners for their return. The forfeits named and provided in this act shall be sued for in the name of the state, by the county attorney of the respective county where such offense is committed, upon the complaint of any officer of said bureau, or any citizen, and shall be paid into the school fund.

2070. There shall be provided a **seal of office** for the use of said bureau, and the commissioner or his deputy, for the purpose of making any investigation contemplated by this act, shall have power to administer oaths, take **testimony,** and subpœna witnesses, which witnesses shall receive the same fees as are allowed to any person testifying in district courts of this state, to be paid out of the contingent fund of this bureau; *Provided, however,* That no person subpœnaed by the said commissioner or his deputy shall be compelled to go outside of the city or town in which he resides to testify in behalf of such investigation.

2071. The commissioner shall **report** biennially to the governor, accompanying his report with such suggestions and recommendations as may be deemed wise and proper. The said report shall be printed and distributed according to the provisions of the law governing the printing of other state reports.

2072. The commissioner shall be allowed a sum not to exceed five hundred dollars per annum for traveling and contingent **expenses,** and a further sum of one hundred dollars per annum for the purchase of books and periodicals on labor and industrial matters for the bureau library. There is hereby appropriated annually, out of any moneys in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this act.

Sec. 2073 formed ch. 52, R. S. 1866, p. 379, entitled "**Ten Hour System.**"

2073. Ten hours shall constitute one **day's labor,** so far as it concerns laborers and mechanics, throughout the state.

Secs. 2074 to 2077. "An act to regulate the **hours of labor** of mechanics, servants, and laborers." 1891, p. 361. In force August 1. (See preface.)

2074. That eight hours shall constitute a **legal day's work** for all classes of mechanics, servants, and laborers throughout the state of Nebraska, excepting those engaged in farm or domestic labor.

2075. Any officer or officers, agent or agents of the state of Nebraska or any municipality therein, who shall openly violate or otherwise evade the provisions of this act, shall be deemed guilty of malfeasance in office, and be suspended or removed accordingly by the governor or head of the department to which such officer is attached.

2076. Any employer or corporation working their employees over the time specified in this act shall pay as extra compensation double the amount per hour as paid for previous hour.

2077. Any party or parties contracting with the state of Nebraska, or any such corporation or private employer who shall fail to comply with or secretly evade the provisions hereof, by exacting or requiring more hours of labor for the compensation agreed to be paid per day than is herein fixed and provided for, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). And all acts or parts of acts inconsistent with this act are hereby repealed.

Secs. 2078 and 2079. "An act to protect the health of female employees." 1883, p. 229. In force February 27.

2078. It shall be the duty of every agent, proprietor, superintendent, or employer of female help in stores, offices, or schools within the state of Nebraska to provide a chair, stool, or seat for each and every such employee, upon which these female workers shall be allowed to rest when their duties will permit, or when such position does not interfere with the faithful discharge of their incumbent duties.

2079. Any neglect or refusal to provide a chair, stool, or seat for every female worker in the employ of any agent, proprietor, superintendent, or employer in the state of Nebraska shall be deemed a misdemeanor, and upon convicion thereof shall be fined in a sum not less than ten dollars nor more than two hundred dollars, and stand committed until such fine be paid, and shall likewise be liable to an action for damages to the said female worker whose health has been injured by this neglect of her employer to provide said chair, stool, or seat, as required by this act.

Secs. 2080 to 2082. "An act to prevent the employment of children in workshops, factories, mines, etc., and providing a penalty for its violation." 1887, p. 669. In force July 1.

2080. That no male or female child under the age of twelve years shall be employed in any railroad shops, factories, shops, or mines to exceed four months in any one year.

2081. That if any person or persons, or body corporate, shall hereafter employ, or if any parent or guardian shall consent to the employment of any male or female child under the age of twelve, as aforesaid, contrary to the provisions of the preceding section, and proof be made thereof before any police judge or justice of the peace of the city, town, or district where such offense is committed, he, she, or they so employing such child, or consenting thereto, as aforesaid, shall, upon conviction, for every such offense pay a fine of not less than ten nor more than fifty ($50) dollars, said fine to be applied to the use of the public schools of the proper city, town, or district; *Provided*, That no conviction shall be had under this act unless proceedings thereunder shall be commenced within one month after the offense shall have been committed.

2082. That all city, town, and district police and constables are hereby authorized and required, and it is hereby made their duty, to attend to the strict observance of the two preceding sections of this act when complaint shall have been properly made to them of a violation of the same.

Secs. 2083 to 2087. "An act to protect the associations and unions of workingmen in the use of labels, trade-marks, and other forms of advertising goods manufactured by members of such associations and unions, and to provide a penalty for the violation thereof." 1891, p. 214. In force August 1. (See preface.)

2083. That it shall be lawful for associations and unions of workingmen to **adopt** for their protection, labels, **trade-marks,** and other forms of advertisement, announcing that goods manufactured by members of such associations or unions are as manufactured.

2084. That any and all persons using such union or association **trade-marks,** labels, or advertisements, whether exactly like such labels, trade-marks, or advertisements or not, if with the intention to, or likely to deceive the public, and that every person who shall use any **counterfeited** labels, trade-marks, or form of advertisement of such unions or associations, knowing the same to be counterfeited, after having been notified in writing by the owner thereof, or his or its agents that the same is counterfeited, shall be guilty of a misdemeanor, punishable by imprisonment for not less than three (3) months nor more than one (1) year, or by a **fine** of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or both; *Provided,* That such notice in writing contains a copy, counterpart, or *fac simile* of such genuine label, trade-mark, or forms of advertisement.

2085. And be it enacted, that every such association or union adopting a label, **trade-mark,** or form of advertisement as aforesaid, shall file the same in the office of the secretary of state, who shall, under his hand and seal, deliver to the association or union **filing** the same a certificate of record, for which he shall receive a fee of twenty-five (25) cents.

2086. And be it enacted, that every such association or union adopting a label, trade-mark, or form of advertisement as aforesaid, may proceed, by suit in the courts of this state, to **enjoin** the manufacture, use, display, or sale of any such **counterfeits,** and that all courts having jurisdiction thereof shall grant an injunction to restrain and prevent such manufacture, use, display, or sale, and shall award the complainants such damages resulting from such wrongful use as may be proved, and shall require the defendants to pay to the party injured the profits derived from such wrongful use, or both profits and damages; and the court shall also order all such counterfeits, in the possession or under the control of the defendant in such case, to be delivered to an officer of the court or to the complainant, to be destroyed.

2087. And be it enacted, that in like manner such unions or associations shall be authorized to preceed against all persons who shall **wrongfully** use or **display** the genuine labels, **trade-marks,** or forms of advertisements of the respective associations or unions, not being authorized by such associations or unions to use or display the same.

CHAPTER 26.—LAW.

Sec. 2088 formed ch. 7, R. S. 1866, p. 31, entitled "Common Law."

2088. So much of the **common law** of England as is applicable and not inconsistent with the constitution of the United States, with the organic law of this territory, or with any law passed or to be passed by the legislature of this territory, is **adopted,** and declared to be law within said territory.

Cited and held not applicable in case of stock running at large. 10, 493 (6 N. W., 600). But party must not drive his stock upon uncultivated land of another. 11, 533 (10 N. W., 451). See 12, 4.

Secs. 2089 to 2094. "An act to provide the manner of proposing amendments to the constitution, and submitting the same to the electors of the state." 1877, p. 114. In force February 13.

2089. That **amendments** to the constitution may be **proposed** by joint resolution in either house of the legislature of this state, and if the same shall be voted for by three-fifths of all the members elected to each of the two houses in the manner provided by section one (1) of article fifteen of the constitution, the amendment or amendments proposed shall be submitted to the electors of this state for adoption or rejection in the manner hereinafter provided.

2090. Such amendment, or **amendments,** shall be **published** in full by the secretary of state in one newspaper in every county in this state in which a newspaper is published, to be designated by the governor, for at least three months before the next election of members of the legislature ensuing the passage of said proposed amendment, with notice prefixed thereto that at said election said proposed amendment or amendments will be submitted to the electors of this state for adoption or rejection.

2091. At such election on the **ballot** of each elector voting for the proposed amendment or amendments to the constitution shall be written or printed the words: "For proposed amendment to the constitution," and "Against said proposed amendment to the constitution."

2092. **Public notice** that the proposed amendment or amendments is, or are, to be voted upon shall be given in each county in the same manner as is or may be required by law regulating general elections, and the **returns** shall be made and the votes canvassed in the same manner and by the same officers as is or may be required by the law in the case of electing the executive officers of the state.

See 25, 864.

2093. If a **majority** of the votes cast at the election herein provided **for** be for the proposed amendments, the governor, within ten days after the result is ascertanied, shall make **proclamation,** declaring the amendments to be part of the constitution of the state.

2094. Whenever any **amendments** to the constitution shall have been proposed to and adopted by the electors of this state, as by this act provided, the same shall be **enrolled** and numbered in the order of time in which they may be adopted, and **preserved** by the secretary of state among the public records of his office.

Secs. 2095 to 2097. "An act concerning the enacting and repealing of statutes." 1873. In force February 21. G. S., 1056.

2095. That every **act** passed by the legislature which contains no provisions as to the time when it **takes effect,** shall take effect and become a law from and after the first of next June.

2096. Whenever a **statute** shall be **repealed,** such repeal shall in no manner **affect** pending actions founded thereon, nor causes of action not in suit that accrued prior to any such repeal, except as may be provided in such repealing statute.

2097. Whenever a law shall be repealed, which repealed a former law, the **former law** shall **not** thereby be **revived** unless specially provided for.

Failure to insert a law in compilation does not invalidate act. 27, 764-5 (43 N. W., 1140).

Secs. 2098 and 2099. R. S. 1866, p. 683.

2098. This act shall be known as "**The Revised Statutes of Nebraska,**" and is hereby declared to be the law of the territory of Nebraska, and shall take effect and be in force from and after the first day of July, in the year of our Lord one thousand eight hundred and sixty-six.

2099. "An act to establish a code of civil procedure," approved November 1, 1858, and an act supplemental thereto, approved November 4, 1858, "An act to adopt and establish a criminal code for the territory of Nebraska," approved 1858, all laws and acts amendatory of and supplemental to said codes and all acts and laws of a general nature relative to the civil and criminal laws and proceedings of this territory, passed prior to the eleventh session of the legislative assembly begun and held at Omaha on the first Thursday after the first Monday in January, 1866, and all acts and parts of acts conflicting with the provisions of this revision are hereby repealed; *Provided,* The re-enactment, amendment, or repeal of any law, act, title, section, chapter, or provision of the civil or criminal code, or of any general law of this territory, shall in nowise affect any contract, right, claim, interest, title, action, or liability which may have accrued, or any order, judgment, decree, sale, recognizance, instrument, or proceeding made, entered, or had under any provision of the laws hereby re-enacted, amended, or repealed, nor shall such re-enactment, amendment, or repeal in anywise affect any criminal prosecution heretofore commenced, or any fine, penalty, forfeiture, or punishment for crimes or misdemeanors committed before the taking effect of this revision, but such prosecution shall be carried on and continued in the manner now provided by law, and all fines, penalties and forfeitures heretofore incurred, and crimes and misdemeanors committed, shall be prosecuted the same as if no re-enactment, amendment, or repeal had been made.

Secs. 2100 and 2101. 1867 (Ter.), p. 7. In force February 13.

2100. *Whereas,* Certain **discrepancies** exist between the original rolls on file in the office of the secretary of the territory, and the published laws of the eleventh session of the legislative assembly of this territory: *Be it further enacted,* That whenever such discrepancies exist, the volume of laws published under the title of "The Revised Statutes of the Territory of Nebraska," in force July 1, 1866, shall be taken and received as the laws of this territory, until afterwards amended or repealed.

2101. That the **volume** of laws published under the title of "The Revised Statutes of the Territory of Nebraska," and the appendix thereto, shall be hereafter **received in all courts** of this territory, anything in the original rolls on file in the secretary's office to the contrary notwithstanding.

Secs. 2102 to 2105. "An act for the publication of a **compilation** of the statutes. 1881, p. 388. In force February 26.

2102. The **public acts** now in force, including the Revised Statutes of 1866, and the public acts and laws passed since that revision, and which may be passed by the legislature at its present session, shall be **compiled,** arranged, and put into chapters, with appropriate heads and titles, and with reference to decisions of the supreme court.

Failure to insert in compilation does not invalidate act. **27**, 764 (43 N. W., 1140).

2103. The said statutes shall be **compiled** and published **by** Guy A. Brown, of Lancaster county, upon the condition that all expenses connected with the preparation and publication thereof shall be borne by him, and the sale price of each copy, when published, shall not exceed five dollars; *Provided further*, That the said Guy A. Brown shall furnish to the state of Nebraska all copies of said statutes which may be required by the state, at a price not to exceed two dollars and fifty cents per copy; *Provided further*, That said statutes shall be equal in quality of paper and binding to the General Statutes of 1873, be set with type of the same size and contain at least one-third more matter on a page, and be thoroughly indexed. Said statutes to be published on or before July 1, 1881.

2104. The said compiler shall give **bond** in the sum of five thousand dollars with at least three sureties, conditioned for the faithful performance of his duties, and to carry into effect the provisions of this act, which bond shall be approved by the secretary of state and filed in his office, and thereupon the said secretary of state shall permit the said compiler, when the same are not in use by him, to take the original rolls of said laws for the purpose of making accurate copies thereof for said statutes, the same to be returned upon publication of said statutes, and whenever required by the secretary of state.

2105. The **said statutes** when published shall be accompanied by a certificate of the compiler that the same are true and accurate copies of the said original rolls, and thereupon the said statutes, and subsequent editions founded thereon, shall be competent **evidence** of the several acts and resolutions therein contained, in all the courts of this state, without further proof or authentication; *Provided*, That the compiler shall furnish copies of any subsequent editions required by the state at the same price as the original edition, to wit, two dollars and fifty cents per copy.

Amended 1885, p. 372.

Sec. 2106. "An act making appropriations for the current expenses of the state government for the years ending March 31, 1892, and March 31, 1893, and to pay miscellaneous items of indebtedness owing by the state of Nebraska." 1891, p. 438. In force April 6.

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2106. For six thousand (6,000) copies of **Nebraska statutes** of 1891, to be **compiled** by J. E. Cobbey, the compilation, material, and workmanship to be acceptable to the secretary of state, to be **distributed** to members of the legislature, state officers, officers of the state institutions, county officers including justices of the peace, commissioners, and supervisors, twelve thousand ($12,000) dollars.

CHAPTER 27.—LEGISLATURE.

Secs. 2107 to 2116 formed secs. 3 to 12, ch. 31, R. S. 1866, p. 249.

2107. The clerks of each house shall file the **certificates** presented by **members,** each for his own house, and make a roll of the members who thus appear to be elected, and the persons thus appearing to be elected members shall proceed to elect such other officers as may be required for the time being.

2108. When the houses are temporarily organized they shall elect a **committee** of five on the part of the house and three on the part of the senate, by ballot, which committee shall examine and report upon the **credentials** of those claiming to be elected members of their respective houses, and when such report is made, those reported as elected shall proceed to the permanent organization of their respective houses, and each house shall be the sole judge of the election returns and qualifications of its own members.

2109. Any member may administer **oaths** in the house of which he is a member and while acting on a committee may administer oaths on the business of such committee.

2110. **No member** of the legislative assembly shall be **questioned** in any other place **for** any speech or words spoken in debate in either house.

2111. Each house of the legislative assembly has power and authority to punish as a **contempt** by fine or imprisonment, or either of them, the offense of knowingly arresting a member in violation of his privilege; of assaulting or threatening to assault a member, or threatening to do him any harm, in person or property, for anything said or done in either house, as a member thereof; of attempting, by menace or other corrupt means, to control or influence a member in giving his vote, or to prevent his giving it; of disorderly or contemptuous conduct, tending to disturb its proceedings; of refusing to attend, or to be sworn, or to be examined as a witness before either house or a committee, when duly summoned; of assaulting or preventing any person going to either house, or its committee, by order thereof, knowing the same; of rescuing or attempting to rescue any person arrested by order of either house, knowing such arrest; and of knowingly injuring any officer of either house in the discharge of his duties as such.

2112. **Imprisonment** for contempt of either house shall not be for more than six hours, and shall be in the jail of the county in which the legislative assembly may then be setting, or if there be no jail, then in one of the nearest county jails.

2113. Should a **fine** be imposed for any offense mentioned in section seven, it shall not exeeed fifty dollars.

2114. **Fines** and **imprisonment** shall be only by virtue of an order of the proper house, entered on its journals, stating the grounds therefor. Imprisonment shall be effected by a warrant, under the hand of the presiding officer, for the time being, of the house ordering it, countersigned by the clerk of the house, running in the name of the state and directed to the sheriff of the proper county; and under such warrant, the officer of the house, sheriff, and jailer will be authorized to arrest and detain the person.

2115. **Fines** shall be **collected** by virtue of a similar warrant, directed to any proper officer of the county in which the offender has property, and executed in the same manner as executions for fines issued by courts of justice, and the proceeds shall be paid into the state treasury.

2116. **Punishment** for contempt, as in this chapter provided, is **no bar** to any other proceedings, civil or criminal, for the same offense.

Secs. 2117 to 2120. "An act fixing the number of **officers** and employees of the **senate** and **house** of representatives, to define their duties and establish their pay." 1867, p. 85. In force June 1.

2117. That the **officers** and employees **of the senate** shall consist of a president, secretary, assistant secretary, sergeant-at-arms, door-keeper, enrolling clerk, engrossing clerk, chaplain, and such other officers and employees, not to exceed sixty-six in number, as may be deemed necessary for the proper transaction of business; such other officers or employees to be elected by the senate.

Amended 1885, p. 274; 1889, p. 571. The constitution and statute fix the number of officers an demployees of the legislature and provide what shall be their duties and compensation. 14, 442 (16 N. W., 481).

2118. The **officers** and employees **of the house** of representatives shall consist of a speaker, chief clerk, assistant clerk, sergeant-at-arms, door-keeper, enrolling clerk, engrossing clerk, chaplain, and such other officers and employees, not exceeding seventy-five in number, as may be deemed necessary for the proper transaction of business. Such other officers or employees to be elected by the house.

Amended 1885, p. 274; 1889, p. 571.

2119. [**Officers—Pay.**]—There shall be **paid** to each of the several **officers and employees** named in this act, for the official services rendered by them under the provisions of this act, the following sums, and no more: The president of the senate and speaker of the house of representatives shall each be entitled to receive the sum of three dollars per day; the secretary and chief clerk, the sum of four dollars per day; the assistant clerks, the sum of four dollars per day; the sergeant-at-arms, the sum of three dollars per day; the door-keeper, the sum of three dollars per day; the chaplains, the sum of three dollars per day; and the pages, the sum of one dollar and fifty cents per day; enrolling and engrossing clerks, three dollars per day.

2120. [**Duties.**]—It shall be the duty of the president of the senate and speaker of the house of representatives to preside over their respective houses, to keep and maintain order during the sessions thereof, and to do and perform the duties devolving on them by general parliamentary usage, and the rules adopted by the two houses. It shall be the duty of the chief clerk of the house of representatives, and the secretary of the senate, to attend the sessions of the respective houses, to call the rolls, read the journals, bills, memorials, resolutions, petitions, and all other papers or documents necessary to be read in either house, to keep a correct journal of the proceedings in each house, and to do and perform such other duties as may be imposed upon them by the two houses, or either of them. The assistant clerk and assistant secretary shall be under the control and direction of the chief clerk and secretary respectively, and shall assist them in the proper discharge of their duties, and shall do and perform such other services as may be directed by the two houses or either of them. It shall be the duty of the sergeant-at-arms to enforce the attendance of absent members, when directed properly so to do; to arrest all members or other persons, when lawfully authorized so to do; to keep and preserve order during the session of each house; to convey to the postoffice the mail matter sent by the respective members, and to receive from the said office the mail matter for the said members, and to deliver the same to them on each morning of the session; to obey and enforce the orders of the presiding officers, and to do and perform such other duties as may be enjoined on them by law and the respective houses. It shall be the duty of the door-keepers to prepare and keep in order the senate chamber and hall of the house, including cleaning and warming the same; to attend to and keep closed the door and bar of the respective houses, unless otherwise directed by the presiding officers thereof; and to do and perform such other duties as may be enjoined on them by either house. It shall be the duty of the engrossing clerk to correctly engross such bills as may be required to be engrossed by the committee on engrossed and enrolled bills, and to perform such other duties as may be required by either house. It shall be the duty of the enrolling clerk to correctly and neatly enroll all such bills as may be placed in his hands therefor, and to perform such other duties as may be enjoined on him by either house. It shall be the duty of the chaplains to open the sessions of each house with prayer, and to perform such other duties as may be imposed on them. And it shall be the duty of the pages to act under and as directed by the presiding officers of the respective houses. It shall also be the duty of the sergeant-at-arms to procure a national flag, and to place the same on the top of the capitol building, there to be kept during the time each or either of the two houses shall be in session, and after the adjournment of the two houses the said flag shall be taken down and kept down until the opening of the session of one of the two houses.

Secs. 2121 to 2128 formed ch. 30, R. S. 1866, p. 247, entitled "Journals and Laws."

2121. The **secretary** of state is hereby authorized to **distribute** the laws and journals of the state, as hereinafter prescribed.

2122. The **county clerk** of each organized county shall make a **requisition** upon the secretary of state for sixty copies (or as many less than that amount as he shall find necessary for the county) of the laws and fourteen copies of the journals of each branch of the legislative assembly, for the use of the county of which he is clerk; and he shall name the conveyance and means of transportation, and shall also specify to whom they shall be directed, and to whose care, and upon the receipt of such requisition the secretary shall at once forward the required number of laws and journals as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the secretary, which receipt shall be filed in the office of the secretary of state.

2123. The **county clerk** shall **distribute** one copy of the laws to each of the officers of the county, as follows: The probate or county judge; each member of the board of county commisioners; the sheriff; the county treasurer; the county surveyor; the prosecuting attorney; each notary public; each justice of the peace; each constable; each road supervisor; and each precinct assessor in said county. He shall also reserve one for himself, and give two copies each of the laws and journals to every councilman and representative who was a member of the legislative assembly by which the laws were enacted.

2124. Each **officer** shall **deliver** up to his successor in office all **statutes** which shall have come into his possession under the provisions of this chapter, as soon after his successor shall have qualified as such **successor,** or the county clerk may require.

2125. After the above distribution the **copies remaining** in the hands of the county clerk shall be **sold** at public auction (ten days' notice having been given in three public places in each county) to the highest bidder, no person, however, to purchase more than two copies; and the proceeds of such sale shall go, first, to defray the cost of transportation from the secretary of state to the county clerk, and the remainder, if any shall exist, shall be paid over to the state librarian, and to be by him held subject to the order of the legislative assembly.

2126. After having so distributed the laws and journals of each legislative assembly, the **secretary** is authorized to **sell copies** of the laws at a price at least equal to cost, and the amount so received shall be applied to the library fund of the state. The secretary of state shall deliver all copies of the laws and journals yet in his possession to the state librarian, who shall officially receipt therefor.

2127. The **librarian** shall, upon the order of either of the judges of the supreme court, **issue** one **copy** each to the district attorney, United States marshal, each register and receiver of all United States land offices in the state, each United States commissioner residing in the state, and such other officers as the judges in their discretion may direct; *Provided, always,* That the librarian shall permit no person to take away a copy or copies of the laws and journals without taking a receipt therefor.

2128. The **members** of each succeeding legislative assembly shall be **furnished** by the state librarian, at the commencement of each session for which they are elected, with one copy each of the **laws** and journals of the preceding session.

CHAPTER 28.—LIBRARIES.

Secs. 2129 to 2142. "An act regulating the **state library.**" 1871, p. 52. In force March 3.

2129. That the books, pamphlets, maps, and charts belonging to the state **library,** now in the state library, or which shall hereafter be added to the same, shall constitute the state library.

2130. There shall be **two divisions** of the state library, one of which shall embrace all miscellaneous works, books, pamphlets, maps, and charts, and the statutes and other books required by law to be deposited in the office of the secretary of state, and shall be known as the miscellaneous division of the state library. The other shall embrace all books of reports, and other law books, and shall be known as the law division of the state library.

2131. The governor, secretary of state, and auditor shall constitute a **board of directors** of the miscellaneous division, and the judges of the supreme court shall constitute a board of directors of the law division of the state library.

2132. Each board of directors shall have power to make such **rules,** not inconsistent with this act, for the regulation of the division of the library under their direction, as they may elect proper, and may prescribe penalties for any violations thereof, which shall be collected in the same manner as for non-return or injury of any books.

2133. **Books may be taken** from the state library by the members of the legislature and its officers, during the session of the legislature, and by the officers of the executive department of the state, and the judges of the supreme court and district courts; and no other person shall be permitted to take or detain from the library more than two miscellaneous works at any one time, or take the same away from the capitol.

2134. Each librarian shall cause to be kept a **register of** all **books** issued and returned at the time they shall be so issued and returned, and none of the books, except the laws, journals, and reports of this state, which may be taken from the library, shall be detained more than ten days, and all the books taken out by officers or members of the legislature shall be returned at the close of the session.

2135. If any person injure or **fail to return** any **book** taken from the library, he shall forfeit and pay to the librarian of the division to which it belongs, for the use of the library, double the value thereof, or of the set to which it belongs if a set is broken by its loss, to be recovered by an action in the name of the people of the state, in any court of competent jurisdiction; and before the auditor shall issue his warrant in favor of any person authorized to take books from the library for the value of his services or amount of his salary, he shall be satisfied that such person has returned all books taken from the library, or settled for the same; otherwise he shall deduct all accounts for detention or injury of such books.

2136. The **librarian** shall, on or before the 20th day of December in each year, **report** to the governor the condition of the division under his charge, stating the number of volumes contained therein, the number of volumes purchased during the past year, and the cost thereof, the number of volumes received by donation, the number of volumes injured or not returned, if any, and the amount received in compensation therefor, and such suggestions and further information as may be deemed by him desirable.

2137. Two hundred dollars shall be **annually** paid out of the state treasury for the use of the library, one-half for each division, which amount, together with the amounts received from fines and forfeitures, under this act, shall be annually expended in the purchase of **additional books**, under the direction of the board of directors.

2138. It shall be the duty of each librarian to cause **each book** in his division to be **labeled** with a printed or stamped label containing the words "Nebraska State Library," and also to write the same words on the thirtieth page of each volume.

2139. The directors of the law division of the state library may sell or **exchange** any surplus or duplicate sets of reports or law books in such division of the library, and use the money arising from such sale in purchasing other law books or reports for such library.

2140. If either librarian shall permit or allow any person not authorized by this act to **remove a book** from the library, he shall be liable, on conviction thereof, to **pay a fine** of not less than five nor more than fifty dollars for every book so taken.

2141. **[Penalty.]**—If any person not authorized by this act shall take a book from the library, either with or without the consent of the librarian, he shall, upon conviction thereof, be fined in any sum not less than ten nor more than fifty dollars for every book so taken.

2142. The **librarian** of the law division of the state library is hereby authorized and required to **send one copy** each of all reports, session laws, journals of senate and house of representatives, and any other books and pamphlets hereafter published for the use of the state of Nebraska, to every one of the states, for the use of their respective libraries.

Secs. 2143 to 2154. "An act to authorize incorporated towns and cities to establish and maintain free public libraries and reading rooms. 1877, p. 150. In force June 1.

2143. The city or town council of each incorporated city or town shall have power to establish and maintain a public library and reading room for use of the inhabitants of such city or town, and may levy a **tax** of not more than one mill on the dollar annually, to be levied and collected in like manner as other taxes of said city or town, and to be known as the library fund.

2144. When any city or town council shall have decided by ordinance to establish and maintain a public library and reading room under this act, they shall elect a library board of nine **directors**, to be chosen from the citizens at large, of which board neither the mayor nor any member of the city or town council shall be a member. Such directors, first elected, shall hold their office, three for the term of one year, three for the term of two years, and three for the term of three years from the first day of July following their appointment, and three directors shall be chosen annually thereafter, and in cases of vacancies by resignation, removal, or otherwise, the council shall fill such vacancy for the unexpired term, and no director shall receive any pay or compensation for any services rendered as a member of such board, and such directors shall give such bond as the council may require.

2145. Such directors shall, immediately after their appointment, meet and organize by electing one of their number president and such other officers as may be necessary. Five of such board shall be a quorum. They shall have **power** to make and adopt such by-laws, rules, and regulations for their own guidance, and for the government of the library and reading room as they may deem expedient, subject to the supervision and control of the city or town council, and not inconsistent with this act. They shall have exclusive control of expenditures of all moneys collected or donated to the credit of the library fund, and of the renting or construction of any library building, the supervision, care, and custody of the grounds, rooms, or buildings constructed, leased, or set apart for that purpose.

2146. Any tax levied or collected, or funds donated thereto, shall be kept for the use of such library separate and apart from other funds of said city or town, and shall be drawn upon by the proper officers upon the authenticated vouchers of the library board, and shall not be used or disbursed for any other purpose.

2147. The library board shall have power to purchase or lease grounds; to erect, lease, or occupy an appropriate building or buildings, for the use of such library; to appoint a suitable librarian and assistants, to fix their compensation, and to remove their appointments at pleasure; and shall have power to establish regulations for the government of such library as may be deemed necessary for its preservation, and to maintain its usefulness and efficiency, and to fix and impose by general rules, penalties, and forfeitures, for trespasses, or injury upon or to the library grounds, rooms, books, or other property, or failure to return any book, or for violation of any by-law or regulation; and shall have and exercise such power as may be necessary to carry out the spirit and intent of this act, in establishing and maintaining a public library and reading room.

2148. Every library and reading room established under this act shall be forever free to the use of the inhabitants of the city or town, subject always to such reasonable regulations as the library board may adopt to render said library and reading room of the greatest use to the inhabitants of said city or town, and the board may exclude from the use of the library and reading rooms, any person who shall willfully violate or refuse to comply with rules and regulations established for the government thereof.

2149. The library board shall, on or before the second Monday in June in each year, make a report to the city or town council, of the condition of their trust on the first day of June in such year, showing all moneys received or expended; the number of books and periodicals on hand; newspapers and current literature subscribed for or donated to the reading room department; the number of books and periodicals ordered by purchase, gift, or obtained during the year, and the number lost or missing; the number of visitors attending; the number of and character of books loaned or issued, with such statistics, information, and suggestions as they may deem of general interest, or as the city or town council may require, which report shall be verified by affidavit of the proper officers of said board.

2150. Any by-law or regulation established by the library board, may be amended or annulled by the council of said city or town.

2151. Penalties imposed or accruing by any by-law or regulation of the library board may be recovered in a civil action before the police judge, or any justice of the peace, or other court having jurisdiction; such action to be instituted in the name of the "library board of the city or town library," and moneys collected in such action shall be forthwith placed in the city treasury to the credit of the library fund.

2152. Any person may make any donation of money or lands for the benefit of such library, and the title to property so donated may be made to and shall vest in the library board, and their successors in office, and such board shall thereby become the owners thereof in trust to the uses of the public library of such city or town.

2153. The property of such library shall be exempt from execution, and shall also be exempt from taxation as other public property.

2154. The library board shall have power to authorize any circulating library, reading matter, or work of art, of any private person, association, or corporation, to be **deposited** in the public library rooms, to be drawn or used outside of the rooms only on payment of such fee or membership as the person, corporation, or association owning the same may require. Deposits may be removed by the owner thereof at pleasure, but the books or other reading matter so deposited in the rooms of any such public library shall be separately and distinctly marked, and kept upon shelves apart from the books of the public city or town library, and every such private or associate library, or other property so deposited in any public library, while so placed or remaining, shall be subject to use and reading within the library room without charge by any person, an inhabitant of said city or town, and entitled to the use of the free library.

CHAPTER 29.—LIENS.

MECHANICS—MATERIAL-MEN—LABORERS.

Secs. 2155 to 2168. "An act to provide a lien for labor performed and material and machinery furnished for the erection, reparation, or removal of any house, mill, manufactory, or building, or appurtenance." 1885, p. 275. In force March 4. (Repealed ch. 35, R. S. 1866, p. 257, and ch. 59, Laws 1881, p. 259.)

2155. **Who entitled to liens.**—Any person who shall perform any labor, or furnish any material or machinery or fixtures for the erection, reparation, or removal of any house, mill, manufactory, or building, or appurtenance by virtue of a contract or agreement, expressed or implied, with the owner thereof or his agents, shall have a lien to secure the payment of the same upon such house, mill, manufactory, building, or appurtenance, and the lot of land upon which the same shall stand.

The foreclosure of a lien is an equitable proceeding in which a jury cannot be demanded. **15,** 437 (19 N. W., 644). In action to enforce mechanic's lien, the relief sought by enforcing the lien does not constitute a separate cause of action. **11,** 395 (9 N. W., 475). Petition held good on demurrer. **11,** 386 (9 N. W., 557). No lien attaches to public buildings. Subcontractor not entitled to lien unless principal is. **3,** 408. Where liens filed against house on contract, land contract price first to be paid and then liens prorate. **28,** 90 (44 N. W., 80). No lien attaches to public buildings. **2,** 6. Mere inchoate right to lien not assignable. Must be perfected under statute before any interest passes. **21,** 462 (32 N. W., 219). Explained. **28,** 237 (44 N. W., 438). See **3,** 452; **15,** 33 (16 N. W., 759); **29,** 569 (45 N. W., 784).

2156. **How secured—Payment by owner.**—Any person or subcontractor who shall perform any labor for, or furnish any material or machinery or fixtures for any of the purposes mentioned in the first section of this act, to the contractor or any subcontractor who shall desire to secure a lien upon any of the structures mentioned in said section, may file a sworn statement of the amount due him or them from such contractor or subcontractor for such labor or material, machinery or fixtures, together with a description of the land upon which the same were done or used, within sixty days from the performing of such labor or furnishing such material, machinery, or fixtures, with the register of deeds of the county wherein said land is situated, and if the contractor does not pay such person or subcontractor for the same, such subcontractor or person shall have a lien for the amount due for such labor or material, machinery and fixtures, on such lot or lots and the improvements thereon, from the same time and in the same manner as such original contractor, and the risk of all payments made to the original contractor shall be upon the owner until the expiration of the sixty days hereinbefore specified. And no owner shall be liable to any action by the contractor until the expiration of said sixty days, and such owner may pay such subcontractor or person the amount due him from such contractor for such labor and material, machinery and fixtures, and the amount so paid shall be held and deemed a payment of such amount to the original contractor. And in cases when a dispute arises between the contractor and his journeyman, or other persons, for work done or material furnished, the owner may retain the amount claimed by said subcontractor, or journeyman, or laborer until the dispute has been settled by arbitration or otherwise. Said sworn statement and claim of lien shall be by such register of deeds recorded in the same manner as other liens provided for by this chapter, and such lien shall remain in force for the same length of time as other liens provided for in this chapter.

Lien does not depend upon contract, expressed or implied, with owner or his agent. Act of 1881 (ch. 59) does not impair obligation of contract by reason of being applied to buildings contracted for when act took effect. **24,** 113 (37 N. W., 931). Party who furnishes material but does not follow the law, has no interest in the property that would entitle him to become a party in foreclosure of an after-acquired mortgage. **1,** 427. The risk of all payments made to the contractor before the expiration of sixty days is upon the owner. **21,** 146 (31 N. W., 673). A subcontractor only has a lien for material actually used or ordered. **17,** 631 (24 N. W., 208). Lien may be assigned and assignee maintain action. **4,** 58.

2157. **Proceedings to secure.**—Any person entitled to a lien under this chapter shall make an account in writing of the items of labor, skill, machinery, or material furnished, or either of them, as the case may be, and after making oath thereto shall, within four months of the time of performing such labor and skill, or furnishing such machinery or material, file the same in the office of the register of deeds of the county of which such labor, skill, and materials shall have been furnished, which account so made and filed shall be recorded in a separate book to be provided by the register of deeds for that purpose, and shall from the commencement of such labor or the furnishing such materials for two (2) years after the filing of such lien operate as a lien on the several descriptions of such structures and buildings and the lots on which they stand, as in the first section of this chapter named. When any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof shall be filed with the account herein required. And if any promissory note shall have been taken for any such labor or materials it shall be sufficient, to secure the lien provided for in sections one and two hereof [2155–6], to file in the office of the register of deeds a copy of such note within the time aforesaid, together with a sworn statement that the sum for which said note was given, or any part thereof, is due for labor and material used for the purpose hereinbefore mentioned, giving in such statement the items of such labor and material, and such lien shall be for the amount so shown to be due for such labor and material, with interest at the rate specified in said note; *Provided,* Nothing herein contained shall be taken to prevent the ascertainment by proceedings at law, or otherwise, of the amount actually due for such labor and material, and such lien shall be for no larger sum than the amount actually due therefor.*

* Words "county clerk" changed to "register of deeds" in these two sections, 1887, p. 374. What is a sufficient compliance with this section. **15,** 640 (19 N. W., 601). Where the contract is for an entire sum when job is completed, itemized account need not be filed. **16,** 156 (20 N. W., 116). Material delivered at different times held to be but one delivery as of last date; court may apportion lien to the several lots. **17,** 389 (23 N. W., 3). Oath may be made by agent of party entitled to lien. **15,** 38 (16 N. W., 759). Not necessary to allege in affidavit that defendant is owner of property. **22,** 660 (35 N. W., 894). Father acting for his daughter makes lien on daughter's property good. **22,** 130 (34 N. W., 104).

2158. **Judgment on account.**—Every person holding any lien under this chapter may proceed to obtain a judgment for the amount of his account thereon by civil action. And when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit be finally determined and satisfied.

2159. **Completion of building by workmen.**—When the owner or owners of any house or building, or his or their agent, as described in this chapter, shall suspend its progress or completion without the consent of such laborers, mechanics, or furnishers, or if the progress or completion of the same be suspended by the decease of the owner or owners at a stage when from its unfinished state such structure would go to waste, the laborers, mechanics, and furnishers thereto, or any of them, may, at their election, proceed with the same at their own cost, so far as to enclose such building, and thereby prevent such waste, provided such work so done after such suspension shall be according to the contract and plan of the owner or owners.

2160. **Defective title—Lease.**—If the person or persons who may erect, as owner or owners, any building described in first section of this chapter [2155] be not, at the suspension or completion of the same, possessed of a legal but equitable title to the ground on which the same is erected (if the same be a fixture), and the fact of such defect of title be made to appear to the court before any judgment or judgments under this chapter may have been obtained, or if the same be returned by any legal officer to whom any execution under this chapter shall be directed, in either case the court shall direct the officer, who has returned or is authorized by law to serve such executions, to rent or lease such buildings until the rents or issues thereof shall pay and satisfy the several liens on which judgments may be had against the same; *Provided*, This law shall not be so construed as to interfere with prior *bona fide* liens, on grounds on which such buildings shall be erected as a fixture.

Where wife has knowledge that husband is building on her lot it is liable to lien. 28, 807 (44 N. W., 1136).

2161. **Lease of premises by order of court.**—In all other cases of judgment or judgments obtained in favor of any lien holder or lien holders, if the property bound by such lien will not sell on execution as provided by law in other cases, having been once duly offered, the court before whom such judgment or judgments may be obtained may direct the officer aforesaid to lease the same in the same manner and for the same purpose pointed out in the preceding section, and the officer giving such lease shall therein require the payment to be made to him or his successors in office, which said successor or successors shall have the same power and perform the same duties therein as the maker of the lease should or could do; and in cases where the money may be collected by said officer on a lease made, it, under this chapter, shall be his duty to forthwith pay the same into the court where the judgment or judgments were obtained, which money shall be distributed to the several lien holders interested in said judgment, in proportion to their several demands.

2162. **Lien, how discharged.**—All liens may be discharged by the payment of debt or judgment, with all legal costs, before the property on which liens attach be sold or leased under this chapter, and if any lien holder or lien holders, after the same be duly tendered him or them, shall proceed at law or shall refuse to give a due discharge from such lien, then such lien holder or holders shall forfeit all liens and pay all cost.

2163. **Owner beyond process.**—If the owner or owners of the property which is subject to a lien under this chapter be without the reach of process, or resident without the state, any lien holders may proceed by attachment against the same as in other cases, and the court before whom such attachment is pending on the entry of judgment, on return of the proper officer, shall have the same power to order a lease as is given in the seventh (7) and eighth (8) sections of this chapter [2161–2].

2164. **Rights of executors.**—Executors and administrators under this chapter shall have the same rights and be subject to the same liabilities that their testators or intestate would or might have, if living.

2165. **Fees of county clerk.**—The county clerks, for filing and recording contracts and accounts under this chapter, shall be paid the same fees that they are legally entitled to in other cases, and the cost of filing and recording such statement or contracts and accounts shall be recovered as part of the costs of enforcing the lien, unless the court shall otherwise order.

2166. **Release of lien—Penalty.**—Each and every person in favor of whom any such lien has existed, after having received satisfaction of his debt, or after final judgment against him by a competent tribunal, showing that nothing is due by reason of such claims, shall, at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or if his or their legal representatives lodge a certificate with said clerk that said debt is satisfied and said lien removed, which said certificate shall be filed and recorded by the clerk on the margin of the record in the same manner that releases of mortgages are now by law required to be recorded, and when so recorded shall forever discharge and release said lien, and if such person, having received such satisfaction as aforesaid, by himself or attorney, or judgment having been rendered against him as aforesaid, shall not, within ten days after request in writing, lodge a notice in writing with the clerk, as is prescribed in this section, he or they neglecting or refusing to do so shall forfeit and pay to the party or parties so agreed any sum of money not exceeding one-half the debt claimed as a lien on such property, according to the circumstances of the case, to be recovered by civil action, and the party lodging such certificate shall pay to the county clerk the costs of filing and recording the same.

2167. **Insurance.**—Any lien holder under this chapter who may deem himself in danger of loss or damage by fire, may notify in writing the owner or agent of property subject to such lien to insure the same in reasonable amount against such loss or damage; and if he shall fail or refuse to do so for the space of ten days, then the person or persons having such lien or liens may insure such property in an amount not to exceed two-thirds of the total amount of their liens, and may recover such proportion of the premium paid therefor, as the court shall deem just and proper as part of the costs of enforcing such lien.

2168. **Remedy not exclusive.**—Any person who shall hold a lien under the provisions of this chapter may, in addition to the remedy herein provided for, proceed by a petition in chancery as in other cases of liens against the owner or owners of, and all other persons interested, either as lien holders or otherwise, in any such house, mill, or manufactory, or other building or appurtenance, in the first section of this chapter mentioned, and the lot or lots of land on which the same shall stand, and obtain such final decree therein for the rent or sale thereof, as justice and equity may require, anything in this chapter to the contrary notwithstanding.

Secs. 2169 to 2171. "An act to make **railroad**, canal, bridge and ditching companies, and, companies and persons responsible for material furnished and labor performed in the construction repair, or improvement of any such works, and to secure the **laborer** and material-man a lien for his material furnished and labor performed." 1881, p. 267. In force June 1.

2169. That whenever any **laborer** upon any railroad, canal, viaduct, bridge, ditch, or other similar improvement in this state, shall have just claim or demand for labor performed on any such railroad, canal, bridge, ditch, viaduct, or other similar improvement against any person or persons who are or any company which is a contractor on such railroad, canal, viaduct, or bridge, or against any person or persons who are subcontractors with any person or persons or company contracting with any such railroad, bridge, viaduct, or ditching company for the construction of any part of such railroad, bridge, canal, viaduct, or ditch of any such company, every such railroad, canal, bridge, or ditch company shall be liable to pay such laborer the amount of such claim or demand with ten per cent interest thereon; *Provided*, Such laborer shall have given **notice** within sixty days after the last item of labor shall have been performed, that he or she has such claim or demand. Such notice shall be given in writing and shall specify the peculiar nature and amount of the claim or demand, and shall be delivered to the president or vice president, superintendent, agent, or the managing director or chief engineer of any such company, or to the engineer in charge of that portion of the work, or any portion of the railroad, canal, viaduct, bridge, or ditch upon which such labor is performed.

A person may have a lien for material furnished a subcontractor for building a boarding shanty, and such lien dates from the furnishing of the material and is a lien on the road-bed. **28**, 39 (44 N. W., 47). See **28**, 591 (44 N. W., 1065).

2170. And when **material** shall have been furnished, or **labor** performed in the construction, repair, and equipment of any railroad, canal, bridge, viaduct, or other similar improvement, such laborer and material-man, contractor or subcontractor, shall have a **lien** therefor, and the said lien therefor shall extend and attach to the erections, excavations, embankments, bridges, **road-bed,** and all land upon which the same may be situated, including the rolling stock thereto appertaining and belonging, all of which, including the right of way, shall constitute the excavation, erection or improvement provided for and mentioned in this act.

2171. Every person, whether contractor or subcontractor or laborer or material-man, who wishes to avail himself of the provisions of the foregoing section shall **file** with the clerk of the county in which the building, erection, excavation, or other similar improvement, to be charged with the lien is situated, a just and **true statement** or account of the demand due him after allowing all credits, setting forth the time when such material was furnished or labor performed, and when completed, and containing a correct description of the property to be charged with the lien and **verified** by affidavit; such verified statement or account must be filed by a principal contractor within ninety days, and by a subcontractor within sixty days, from the date on which the last of the material shall have been furnished, or the last of the labor is performed; but a failure or omission to file the same within the periods last aforesaid shall not defeat the lien, except against purchasers or incumbrances in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, That when a lien is claimed upon a railway, the subcontractor shall have sixty days from the last day of the month in which said labor was done or material furnished within which to file his claim therefor; *And Provided further*, That when any such material is furnished or work done in any unorganized county in this state, such statement of the demand due, verified as aforesaid, may be filed in any county in this state into or through which any such railroad or canal may run, or in the organized counties lying next nearest east of the county where said work was done or material furnished; *Provided further*, That such **lien** shall continue **for** the period of **two years,** and that any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action; and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied.

Sec. 2172. "An act to secure the payment of mechanics' and laborers' wages on all **public buildings** where the provisions of the general mechanic's lien laws do not apply." 1889, p. 375. In force July 1.

2172. It shall be the **duty of** the **board** of public lands and buildings, boards of county commissioners, the contracting board of officers of all cities and villages, and all public boards now or hereafter empowered by law to enter into a contract for the erecting and finishing, or the repairing of any public building, bridge or other public structure to which the general provisions of the mechanic's lien laws do not apply, and where mechanics and laborers have no lien to secure the payment of their wages, to take from the person or corporation to whom the contract is awarded a **bond** with at least two good and sufficient sureties conditioned **for** the **payment of all** laborers and mechanics for **labor** that shall be performed in the erecting, furnishing, or repairing of the building or in performing the contract; said bond shall be to the board awarding the contract; and no contract shall be entered into by such board until the bond herein provided for has been filed with and approved by said board. The said bond shall be safely kept by the board making the contract and may be sued on by any person entitled to the benefit of this act. The action shall be in the name of the party claiming the benefit of this act.

CHAPTER 30.—LIQUORS.

Secs. 2173 to 2202, except sec. 2183. "An act to regulate the license and sale of malt, spirituous, and vinous liquors," etc. 1881, p. 270. In force June 1. (Repealing G. S. 1873, ch. 53, p. 851; Laws 1875, pp. 20 and 24). (Secs. 2193 to 2196 inserted 1889, p. 380.)

2173. The county board of each county may grant **license** for the sale of malt, spirituous, and vinous liquors, if deemed expedient, upon the **application** by petition of a majority of the resident freeholders of the town, if the county is under township organization, and if not under township organization, then a majority of the resident freeholders of the precinct where the sale of such liquor is proposed to take place, setting forth that the applicant is a man of respectable character and standing and a resident of this state, and praying that license may be issued to him; such application to be filed in the office of the county clerk and upon payment into the county treasury of such sum as the board may require, not less than five hundred ($500) dollars for each license, and upon the compliance with the provisions of this act; *Provided*, Such board shall not have power to issue any license for the sale of any liquors in any city or incorporated village or within two (2) miles of the same; **Provided*, In counties having one hundred and fifty thousand (150,000); inhabitants the county commissioners may also issue license within two (2) miles of any city in said county.

Former act required but thirty petitioners. Amended and all after * added 1891, p. 279. Held constitutional. **11**, 555 (10 N. W., 481); **18**, 323 (25 N. W., 338). Title of act broad enough to meet requirements of sec. 11, art 3, const. **27**, 791-2 (43 N. W., 1150). Legislature has power to regulate and fix price of license. **7**, 381. Wholesalers are amenable to this law as well as retailers. **17**, 311 (22 N. W., 545). License money must be paid in before license issues. **6**, 15. Thirty signers to petition is a necessary prerequisite to obtaining a license. **20**, 469 (30 N. W., 531). Commissioners have a discretion as to whether they will issue license or not, and their action in that respect cannot be controlled by mandamus. **12**, 56 (10 N. W., 571). Proper authorities of incorporated towns and cities exercise same authority as county commissioners. **5**, 313. License fee a tax. **5**, 516. Exaction of license fees is not taxation. **11**, 556 (10 N. W., 481). See **20**, 521 (30 N. W., 940).

2174. No action shall be taken upon said **application** until at least two weeks' **notice** of the filing of the same has been given **by publication** in a newspaper published in said county, having the largest circulation therein, or if no newspaper is published in said county, by posting written or printed notices of said application in five of the most public places in the town, precinct, village, or city in which the business is to be conducted, when, if there be no objections in writing made and filed to the issuance of said **license**, and the county board is in session, and all other provisions of this chapter have been fully complied with, it may be **granted**.

Newspaper need not have largest circulation in the city; in absence of charge of bad faith on part of applicant, his selection of a paper will not be inquired into. **29**, 285 (45 N. W., 250). No action can be taken until two full weeks' notice has been given. **21**, 495 (32 N. W., 593).

2175. If there be any objection, protest, or **remonstrance** filed in the office where the application is made against the issuance of said license, the county board shall appoint a day for hearing of said case, and if it shall be satisfactorily proven that the applicant for license has been guilty of the violation of any of the provisions of this act within the space of one year, or if any former license shall have been revoked for any misdemeanor against the laws of this state, then the board shall refuse to issue such license.

Remonstrance may be filed any time before the issuance of the license. **19**, 169 (26 N. W., 707). Mandamus will issue to compel the proper hearing of remonstrance. License cannot issue until it is properly heard and passed upon. **18,** 431 (25 N. W., 610.) Remonstrators should be allowed a reasonable time to produce testimony. **24,** 264 (38 N. W., 752). Remonstrance must be heard if applicant has violated the law; license must be refused; one of the board who has petitioned cannot vote on the granting of license. **25,** 607 (41 N. W., 558). Denial in a remonstrance, of jurisdictional matter, throws burden of proof on applicant; but in alleging new matter burden is upon remonstrator. **29,** 286 (45 N. W., 457). Provisions mandatory and license issued without compliance therewith will be revoked. **24,** 612 (39 N. W., 780). Words in section from "and" to "state" do not restrict right of rejection to causes stated therein. **24,** 612 (39 N. W., 780). See **13,** 11 (12 N. W., 838).

2176. On the **hearing** of any case arising under the provisions of the last two sections, any party interested shall have process to compel the attendance of **witnesses** who shall have the same compensation, as now provided by law in the district court, to be paid by the party calling said witnesses. The testimony on said hearing shall be reduced to writing and filed in the office of application, and if any party feels himself aggrieved by the decision in said case he may **appeal** therefrom to the district court, and said testimony shall be transmitted to said district court and such appeal shall be decided by the judge of such court upon said evidence alone.

Definite time for hearing remonstrance shall be set. **20,** 471 (30 N. W., 531). Findings of city council as to jurisdictional facts, presumed to be supported by the evidence. **29,** 287 (45 N. W., 457). Appeal not a proceeding in error and requires no bond. Upon notice of appeal being given, license should not be issued, and if it has been issued, should be recalled. **24,** 520 (39 N. W., 427). While appeal from judgment of district court sustaining action of city council in granting license, is pending in supreme court, latter will not grant mandamus to compel revocation of license. **27,** 476 (43 N. W., 249). Appeal must be taken as soon as with reasonable diligence transcript can be prepared and filed. Sixty days was held too late. **13,** 10 (12 N. W., 838).

2177. The **license** shall state the time for which it is granted, which shall not exceed one year, the place where the liquor is to be sold, and shall **not be transferable;** and any license granted under this chapter **may be revoked** by the authority issuing the same whenever the person licensed shall, upon due proof made, be convicted of a violation of any of the provisions of this act. The license shall be in the following **form,** as near as practicable: "State of Nebraska, County of ———, ss. To all who shall see these presents: Know ye, that ———, having on the —— day of ———, A. D. 18—, filed his petition and bond according to law and paid into the treasury the sum imposed on him as a vendor of malt, spirituous, and vinous liquors, therefore the said ——— is hereby authorized to sell malt, spirituous, and vinous liquors at ——— for ——— months ending the —— day of ———, A. D. 18—. In testimony whereof, I, ———, clerk of ———, have affixed the seal of said ———, this —— day of ———, A. D. 18—. (Seal.) ———, Clerk."

License is not assignable. **11,** 366 (9 N. W., 560).

2178. No person shall be licensed to sell malt, spirituous, and vinous liquors, by any county board, or the authorities of any city or village, unless he shall first give **bond** in the penal sum of five thousand dollars ($5,000), payable to the state of Nebraska, with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, to be approved by the board who may be authorized to issue the license, conditioned that he will not violate any of the provisions of this act, and that he will pay all damages, fines, and penalties and forfeitures which may be adjudged against him under the provisions of this act. The board taking such bond may examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person so licensed, or by his agent or servant.

No action can be maintained on a bond which does not provide for payment of all damages adjudged against the licensed parties. **3,** 107. Bond not void if made to run to city instead of to the state. **19,** 324 (27 N. W., 231).

2179. No person who is holden as the principal or **surety** upon any bond **given** under the provisions of the preceding section shall be permitted to become a surety upon any other bond of like character.

2180. Every person licensed as herein provided, who shall give or sell any malt, spirituous, and vinous **liquors,** or any intoxicating drinks, **to** any **minor,** apprentice, or servant under twenty-one years of age, shall forfeit and pay for each offense the sum of twenty-five dollars.

See **12,** 539 (11 N. W., 848).

2181. Any minor, apprentice, or servant who shall, for the purpose of evading the provisions of the preceding section, **falsely represent** his **age,** shall be deemed guilty of **misdemeanor** and fined for each and every offense not exceeding twenty dollars, or imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

2182. Every person so licensed who shall sell any intoxicating **liquors to** any **Indian, insane** person, or **idiot,** or habitual drunkard shall forfeit and pay for each offense the sum of fifty dollars.

Sec. 2183. "An act to make the selling or giving away of malt, spirituous, or vinous liquors or intoxicating drinks of any kind whatsoever to an Indian, not a citizen, a felony and providing a penalty therefor." 1891, p. 267. In force April 8.

2183. Any person who shall sell or **give away** under any pretext whatsoever any malt, spirituous, or vinous **liquors,** or any intoxicating drinks of any kind whatsoever, **to** any **Indian,** not a citizen, shall be deemed guilty of a **felony,** and upon conviction thereof shall be fined not exceeding one thousand dollars ($1,000) or imprisoned in the penitentiary for a term of not less than two years nor more than five years.

2184. All persons who shall **sell** or give away, upon any pretext, malt, spirituous, or vinous liquors, or any intoxicating drinks, **without** having first complied with the provisions of this act, and obtained a **license** as herein set forth, shall for each offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not to exceed one month in the county jail, and shall be liable in all respects to the public and to individuals, the same as he would have been had he given bonds and obtained license as herein provided; **Provided,* That any person or persons shall be allowed to sell wine made from grapes grown or raised by said person or persons on land belonging to or occupied by said person or persons in the state of, Nebraska, the same to be sold in quantities not less than one gallon, without procuring the license provided for in this chapter.

All after * added 1883, p. 237. Each act is an offense; an indictment charging all the acts, with a *continuendo*, is bad. **16,** 491 and 608 (20 N. W., 848; 21 N. W., 468). An indictment charging that accused did "sell and give away" is not bad either for duplicity or uncertainty, as the words "give away" are mere surplusage. **27,** 604 (43 N. W., 398). License issued to A and by him assigned to B is no defense to indictment against B for selling without license. **11,** 366 (9 N. W., 560). Where conviction is had on general counts, court cannot make total fine less than the minumum on each count. **28,** 805 (44 N. W., 1137). A separate judgment must be pronounced by the court upon each count. **25,** 594 (41 N. W., 399). Wholesale liquor dealer licensed at home need not take out new license in other parts of state. **27,** 166 (42 N. W., 1054). In case stated, held incumbent to prove at least *prima facie* that liquors were sold without license. **27,** 169 (42 N. W., 1054). See **11,** 576 (10 N. W., 481). Sale of beer in Illinois to a citizen of Nebraska for shipment here not a violation of the law or public policy of this state. **29,** 720 (46 N. W., 286).

2185. The magistrate, before whom any complaint is made of a violation of the provisions of the preceding section, shall issue a warrant for the arrest of the **offender,** and if upon an **examination** the magistrate shall have reason to believe the party guilty, he shall recognize him to appear at the next term of the district court as in cases of felony.

2186. Every person so licensed, or any other person, who shall intentionally, or otherwise, sell or give away, or direct or permit any person or persons in his employ to sell or give away, any malt, spirituous, or vinous **liquors** which shall be **adulterated** with strychnine, strontia, sugar of lead, or any other substance, shall forfeit and pay the sum of one hundred dollars for every such offense. An analysis made by a practical chemist shall be deemed competent testimony under the provisions of this section.

2187. Every person who shall sell or give away any malt, spirituous, and vinous liquors on the **day** of any general or special **election,** or at any time during the first day of the week, commonly called **Sunday,** shall forfeit and pay **for** every such offense, the sum of one hundred dollars.

This is an indictable offense. **15,** 474 (19 N. W., 613).

2188. The person so licensed shall pay all **damages** that the community or individuals may sustain in consequence of such traffic, he shall support all paupers, widows, and orphans, and the expenses of all civil and criminal prosecutions growing out of, or justly attributed to, his traffic in intoxicating drinks; said damages and expenses to be recovered in any court of competent jurisdiction by any civil action on the bond named and required in section 6 of this act, a copy of which, properly authenticated, shall be taken in evidence in any court of justice in this state; and it shall be the duty of the proper clerk to deliver, on demand, such copy to any person who may claim to be injured by such traffic.

License no protection against liability to pay damages. **9,** 308 (2 N. W., 715). Definition of word "individual," see **20,** 563 (31 N. W., 76). A joint action may be maintained against several. **23,** 152 (36 N. W., 278). An action can be maintained for loss of head of family by widow and children, either jointly or severally. **15,** 150 (18 N. W., 27). To carry costs the final recovery must be $200 if action first commenced in county court. **16,** 113 (19 N. W., 610). Exemplary damages not allowed. **9,** 315 (2 N. W., 715).

2189. It shall be lawful for any **married woman,** or any other person at her request, to institute and maintain, in her own name, a **suit on** any such **bond** for all damages sustained by herself and children on account of such traffic, and the money when collected shall be paid over for the use of herself and children.

In suit by married woman she may testify as to amount necessary to support herself and children. **17,** 412 (22 N. W., 785). See **23,** 674 (37 N. W., 600).

2190. When any person shall become a county or city charge by reason of intemperance, **a suit** may be instituted **by** the proper **authorities on** the **bond** of any person licensed under this act who may have been in the habit of selling or giving intoxicating liquors to the person so becoming a **public charge;** *Provided,* That the person against whom a judgment may be rendered under the provisions hereof may recover by a similar action a proportionate part of said judgment from any and all persons engaged in said traffic who have sold or given liquor to such person becoming a public charge, or to any person committing an offense.

This does not preclude a pauper from bringing an action for loss of support. **18,** 48 (24 N. W., 429).

2191. On the **trial** ot any suit under the provisions hereof, the cause or foundation of which shall be the acts done or injuries inflicted by a person under the influence of liquor, it shall only be necessary to sustain the action to prove that the defendant or defendants sold or gave liquor to the person so intoxicated, or under the influence of liquor, whose acts or injuries are complained of, on that day or about that time when said acts were committed or said injuries received; and in an action for damages brought by a married woman, or other person whose support legally devolves upon a person disqualified by intemperance from earning the same, it shall only be necessary to prove that the defendant has given or sold intoxicating drinks to such person during the period of such disqualification.

This section does not violate sec. 6, art. I, of the constitution. **11,** 573 (10 N. W., 481). All who sold about the time may be sued in one action. **15**, 150 (18 N. W., 27). And have no more challenges than one defendant. **18**, 49 (24 N. W., 429). Sale of liquors may be proved by circumstantial evidence. **13**, 432 (14 N. W., 150). Under facts, evidence of physicians as to probable effect of continued drinking in causing suicide admissible. But not evidence that on day of suicide deceased was charged with embezzlement. **27**, 792 (43 N. W., 1150). Carlisle Tables printed in a law book in common use admissible without further authentication. **27**, 124 (42 N. W., 907).

2192. All **suits** for damages and expenses arising under this act may be commenced and prosecuted before a justice of the peace, where the damages claimed do not exceed the **jurisdiction** of said justice, although the penalty in the bond may exceed that amount, and the judgment shall be for the damages proved.

Sec. 2193 to 2196. "An act amendatory of and supplemental of chapter fifty (50) of Compiled Statutes of 1885, entitled 'Liquors.'" (Inserted in original act 1889, p. 380.)

2193. Hereafter it shall be **unlawful** for any person to keep for the purpose of **sale** without license any malt, spirituous, or vinous liquors in the state of Nebraska, and any person or persons who shall be found in possession of any intoxicating liquors in this state, with the intention of disposing of the same without license in violation of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned as provided in section eleven of this chapter; *Provided*, That this shall not apply to physicians or druggists holding permits for the sale of liquors for medicinal, mechanical, chemical, or sacramental purposes, or persons having liquors for home consumption. If any credible, resident freeholder of any county in this state shall, before any police judge, county judge, or justice of the peace, make **complaint** and information in writing and on oath that he has reason to believe and does believe that any intoxicating liquor, describing it as particularly as may be in said complaint, is in said county, in any place described as nearly as may be in said complaint, owned or kept by any person named or described in said information as particularly as may be, and is intended to be, or is being, by the person named or described in said complaint, sold without license in violation of this chapter, said magistrate shall, upon filing said complaint and believing there is probable cause therefor, issue his **warrant** for the search of the premises described in said complaint, and the arrest of the person therein named or described as the case may be, naming and describing the liquors, person, and premises as in the complaint, which warrant shall be directed to the sheriff, city or village marshal or constable, as the complainant may request, and said warrant shall further command the officer that if after a thorough and diligent search of said premises, he shall seize the said liquor with the vessels containing it and to keep the same securely until final action be had thereon; and immediately **arrest** the person named or described in said warrant, or the person in charge of the said liquors and bring him before said magistrate for examination, and the possession of any of said liquors shall be presumptive evidence of a violation of this chapter and subject the person to the fine prescribed in section eleven, unless after examination he shall satisfactorily account for and explain the possession thereof, and that it was not kept for an unlawful purpose. Where any liquors shall have been seized by virtue of any such warrant the same shall not be discharged or returned to any person claiming the same, by reason of any alleged insufficiency of the description in the complaint or warrant of the liquor or places, but the claimant shall be entitled to an early and speedy hearing on the merits of the cause; *Provided*, That in case the place described in said complaint and to be searched is the residence of the person named or described in said complaint, or any other person, then and in that case the warrant shall not issue unless the complaint shall state that within thirty days, immediately preceding the filing thereof, that liquor, describing it, has been sold therein in violation of this chapter.

Persons evading law punished. **9**, 191 (2 N. W., 214).

2194. If upon said examination the magistrate hearing the same shall be satisfied that the person named or described in the complaint, or found in possession of said liquors and premises described therein, had been selling liquors without license, in violation of this chapter, or had said liquors so seized in his or her possession with intent to dispose of the same in violation of this chapter, said magistrate shall hold said person so arrested for **trial** at the next term of the district court and shall order the liquors so seized destroyed by the officer having them in charge; *Provided,* The defendant may appeal from said order to the district court, in which case the liquors shall abide the result of the trial of the defendant in the district court, and if there convicted he shall be fined or imprisoned as in this chapter provided, in the discretion of the court, and the court shall further order said liquors destroyed as if the appeal herein provided for had not been taken.

2195. In case the defendant is acquitted he shall be discharged and the liquors returned, but if found guilty, in addition to the payment of a fine he shall pay all **costs** of prosecution, including a reasonable attorney fee to the prosecuting attorney (in case the county attorney does not prosecute), to be determined by the court, in no case less than twenty-five dollars, which shall be taxed in the costs and recovered as other costs. If the defendant be discharged the costs shall be paid by the complaining witness unless the court shall sustain the finding that there was probable cause for the complaint. If no one is found in the possession of said premises where said liquors may be found, the officer taking the same shall post in a conspicuous place on said building or premises a copy of his warrant, and take possession of said liquors and the vessels containing the same, and hold them subject to the order of the magistrate and make return of his doings to the magistrate issuing the warrant. Whereupon it shall be the duty of the magistrate to fix a time for the hearing of the question of the purposes for which said liquors were kept, and issue a notice thereof to the officer, who shall post a copy thereof on the building or premises where the liquors were found; *Provided,* That the day so fixed shall not be less than five nor more than ten days from the date of the issuance of said notice. If at the time fixed for said hearing no person appears, or if any person does appear, after a hearing, the magistrate shall be satisfied that said **liquors** were being kept, or sold, or with the intention and for the purpose of being sold, in violation of this chapter, the magistrate shall order the same **destroyed,** and in case there is no appearance by any one claiming to be the owner of said liquors, the costs shall be paid by the county in which the complaint is brought for cases where the defendant is acquitted, and if any one appears and resists the complaint he shall be adjudged to pay the costs if the liquor be ordered destroyed; *Provided,* The possession of said liquors are not found to be for an unlawful purpose, the magistrate shall order them returned to the place where seized.

2196. **[Fines—Payments—Complaining witness.]**—All fines and penalties recovered under the provisions of this act shall, when collected, be paid into the proper treasury for the use of the school fund, and the corporate authorities by whom such license was issued shall pay to the complaining witness in such action, out of the general fund of the county or city, an amount equal to one-fourth of the sum actually collected and paid over to the school fund as aforesaid.

See **28,** 258 (44 N. W., 186).

2197. The county board, under the restrictions contained in section one (1) [2173] of this act, may grant **permits to druggists** to sell liquors for medicinal, mechanical, and chemical purposes upon a compliance with all the provisions hereinbefore contained, and subject to all the requirements and penalties contained in this act, except that no license fee shall be required except the cost of issuing said permit.

2198. The corporate authorities of all **cities** and villages shall have **power to license,** regulate, and prohibit the selling or giving away of any intoxicating, malt, spirituous, and vinous, mixed, or fermented liquors within the limits of such city or village, the license not to extend beyond the municipal year in which it shall be granted, and to determine the **amount** to be paid for such license, not less than five hundred dollars ($500) in villages and cities having not more than ten thousand (10,000) population, nor less than one thousand ($1,000) dollars in metropolitan cities and cities of the first class, and cities having over ten thousand (10,000) population; **Provided, however,* That in cities of the metropolitan class the power to license the selling or giving away of any intoxicating, malt, spirituous, vinous, mixed, or fermented liquors shall be vested exclusively in the board of fire and police commissioners of such city, and as compensation for such services they shall each receive the sum of four hundred dollars ($400) annually, payable out of the police fund of their respective cities; *Provided further,* That in cities of the first class having more than twenty-five thousand (25,000) and less than eighty thousand (80,000) inhabitants the power to license the selling or giving away of any intoxicating malt, spirituous, vinous, mixed, or fermented liquors shall be vested exclusively in the excise board of such cities; *Provided further,* That the city council in cities, except in cities of the metropolitan class, and in such cities the board of fire and police commissioners, and except in cities of the first class having more than twenty-five thousand (25,000) and less than eighty thousand (80,000) inhabitants and in said cities the excise board* or the board of trustees in villages may grant permits to druggists for the sale of liquors for medicinal, mechanical, and chemical purpose only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance and subject to the provisions of section 26 of this act [2199]; *Provided further,* That in granting licenses or permits such corporate authorities in cities and villages and the board of fire and police commissioners in cities of the metropolitan class shall comply with and be governed by all the provisions of this act in regard to granting of licenses and all the provisions and penalties contained in this act shall be applicable to such licenses and permits, and the persons to whom they are granted; *Provided further,* that in granting any license the **petition** therefor shall be sufficient if signed by thirty (30) of the resident freeholders, or if there are less than sixty (60), a majority of the freeholders of the ward or village where the sale of such liquors is to take place.

Amended and from * to * added 1889, p. 355. A name signed by another without consent does not count. 28, 418 (44 N. W., 479). There must be an *ordinance* authorizing the issuance of a license in cities before any steps can be taken to procure one. 11, 523 (10 N. W., 410).

2199. Any **druggist** to whom a permit may be granted, as contemplated in sections 24 and 25 of this act, shall keep in a book, provided by him for that purpose, a **register** of all **liquors sold** or given away by him, which register shall show the dates, kind, quantity, for what purpose and to whom such liquor was sold or given away, which book shall be at all times open to the inspection of the public; all druggists to whom such permit may be granted shall, on the first Monday of January and July of each year, file in the office of the clerk of the authorities granting such permits, a **report** of all entries made in said register as contemplated in this section since his last report, which report shall be subscribed and sworn to as correct by said druggist, and that he has not sold or given away, either by himself, clerk, or agent, any liquors other than as stated in said report. Any druggist failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, for each and every offense, shall be fined in any sum not less than twenty dollars ($20) nor more than one hundred dollars

($100), and be imprisoned in the county jail not less than ten days nor more than thirty days, in the discretion of the court.

A druggist can only sell with permit and then according to law. **17,** 411 (22 N. W., 785).

2200. If any one purchasing intoxicating liquors of a person authorized to sell shall make to such person any **false statement** regarding the use to which such liquor is intended by the purchaser to be applied, such person so obtaining such liquor shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine of ten dollars, together with costs of prosecution, or shall stand committed until the same is paid. For the second offense he shall pay a fine of twenty dollars and costs of prosecution, and be imprisoned in the county jail not less than ten days nor more than thirty days.

2201. If any person shall be found in a state of **intoxication** he shall be deemed guilty of a misdemeanor, and any peace officer may, without warrant, and it is hereby made his duty to take such person into custody, and to detain him in some suitable place till an information can be made before a magistrate and a warrant issued in due form, upon which he may be arrested and tried, and if found guilty, he shall pay a **fine** of ten dollars and the costs of prosecution, or shall be imprisoned in the county jail not more than thirty days. But the magistrate before whom such person is tried and convicted may remit any portion of such penalty and order the prisoner to be discharged upon his giving information under oath, stating when, where, and of whom he purchased or received the liquor which produced the intoxication, and the name and character of the liquor obtained. In cases arising under this section **appeals** may be allowed as in cases of ordinary misdemeanor within the jurisdiction of the justices of the peace.

This section constitutional. **26,** 760 (42 N. W., 762). See **13,** 12 (12 N. W., 838).

2202. It shall be the duty of all vendors of malt, spirituous, or vinous liquors, under the provisions of this act, to keep the **windows and doors** of their respective places of business **unobstructed** by screens, blinds, paint, or other articles, and any person offending against the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than $25, or be imprisoned in the county jail not less than ten days, or both, at the discretion of the court, and shall have his license revoked by the same authority granting the same.

Secs. 2203 and 2204. "An act to prevent treating in saloons and other public places." 1881, p. 281. In force June 1.

2203. All persons are prohibited from **treating** or giving away any liquor, beer, wine, or intoxicating beverage whatever, purchased and to be drank **in** any saloon or other **public place** where such liquors or beverages are kept for sale.

2204. Any person treating or offering to treat any other person, or accepting, or offering to accept any treat or gift of any intoxicating drink whatever in any saloon or public place where such liquors are kept for sale, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be subject to a **fine** of ten dollars, or **imprisonment** in the common jail of the county for ten days, or both, at the discretion of the court; and in addition thereto shall pay into said court the sum of fifteen dollars, to be paid to the attorney prosecuting the case if there be one; and if no attorney prosecutes, then to be paid in the school fund of the county in addition to the fine.

Sec. 2206 to 2207. "An act for the prevention of certain immoral practices." 1877, p. 6. In force June 1.

2205. **[Sale near camp meetings.]**—That no person shall sell, or expose for sale, give, barter, or otherwise dispose of, in any way or at any place, any spirituous or other liquors, or any article of traffic whatever, at or within the distance of three miles from the place where any religious society or assemblage of people are collected or collecting together for religious worship in any field or woodland; *Provided*, That nothing in this act shall affect tavern keepers from exercising their calling, nor distillers, manufacturers, or others in prosecuting their regular trades, at their places of business; or any persons disposing of any ordinary articles of provisions, excepting spirituous liquors, at their residences; nor any persons having written permit from the trustees or managers of any such religious society or assemblage, to sell provisions for the supply of persons attending such religious worship, their horses or cattle, such persons acting in conformity to the regulations of said religious assembly and to the laws of the state.

Does not refer to camp meetings located within the limits of a city or village. 13, 196 (13 N. W., 172.)

2206. That any person found guilty of committing a breach of the provisions of this act shall forfeit and pay, for every such offense, a **fine** of not less than twenty nor more than one hundred dollars, into the county treasury of the county within which such offense is committed, for the use of the common schools in said county, and any county judge, sheriff, coroner, or justice of the peace shall, upon view or information and with or without warrant, apprehend any person or persons so offending, and **seize** all such **liquors** or other articles of traffic, and the utensils or furniture containing them, and convey them before a justice of the peace or the county judge within the county in which such crime or offense may be committed, and the said county judge or justice of the peace upon complaint, under oath or affirmation of said officer apprehending such offender or any person giving information, shall issue his **warrant** of arrest, which shall be formally served by the proper officer, and proceed to inquire into the truth of said accusation, and, if found true, shall proceed to bind said offender or offenders in an amount not exceeding five hundred dollars, as he shall deem proper, to answer at the next regular term of the district court in and for the county in which such offense shall have been committed, to be proceeded with by indictment, the fine and costs to be allotted as in other criminal cases; *Provided, however*, That if such offender or offenders shall plead guilty, said judge or justice shall affix the **penalty** and proceed to judgment, and in such case he shall immediately issue execution against the property and body of the defendant or defendants for the fine and costs unless paid or secured; and said defendant or defendants shall not be discharged until said judgment shall be fully paid or secured to be paid.

2207. That in any prosecution against any person or persons for a violation of the provisions of this act, if the defendant or **defendants** shall be **acquitted**, he or they shall **recover** of the person or persons filing the complaint **double** the amount of his or their **costs** which said county judge or justice shall award.

CHAPTER 31.—MILITIA.

Secs. 2208 to 2265. "An act to amend an act entitled 'An act to establish a military code for the state of Nebraska,' approved February 28, A. D. 1881, and to repeal chapter 64, Laws 1881, as now existing." 1887, p. 480. In force July 1.

2208. **Every** able-bodied **male citizen** of this state between the ages of eighteen and forty-five years, not expressly exempted by law, shall be **subject to** military **duty** and be designated as the militia.

2209. When it is necessary to execute the law, suppress insurrection, or repel invasion, or when a requisition is made by the president of the United States for troops, the governor, as commander-in chief, shall, by his proclamation, require the **enrollment** of the militia of the state, or such portion thereof as may be necessary, in a manner herein provided.

2210. The active militia shall be designated as the "Nebraska National Guard"; shall be recruited by volunteer enlistment; shall **consist** of not more than two thousand men, and shall be assigned to regiments and brigades by the commander-in-chief. All **enlistments** therein shall be for three years, and made by signing enlistment papers in duplicate according to a form prescribed by the adjutant general, and taking the following **oath** or affirmation, which may be administered by the enlisting officer or any commissioned officer of the rank of captain, to-wit: "You do solemnly swear (or affirm) that you will bear true allegiance to the United States and the state of Nebraska, and that you will support the constitution thereof, and that you will serve the state of Nebraska faithfully in its military service for the term of three years unless sooner discharged, or you cease to become a citizen thereof, and that you will obey the orders of the commander-in-chief and such officers as may be placed over you, and the laws governing the military forces of the state of Nebraska—So help me God."

2211. The **organization** of the Nebraska National Guard shall conform to the provisions of the laws of the United States, and the system of **discipline** and of exercise shall conform as nearly as may be to those of the army of the United States.

2212. The **staff** of the commander-in-chief shall consist of an adjutant general with the rank of brigadier general, who shall be ex-officio chief of the staff; a quartermaster and commissary general and a surgeon general, each with the rank of colonel; an inspector general with the rank of lieutenant colonel; a judge advocate general with the rank of major, and as many aides-de-camp as he may think proper, each with the rank of colonel, who shall serve without pay or emoluments in time of peace. The **adjutant general** shall issue and transmit all orders of the commander-in-chief with reference to the militia or military organizations of the state, and shall keep a record of all officers commissioned by the governor, and of all general and special orders and regulations, and of all such matters as pertain to the organization of the state militia and Nebraska National Guard, and perform the duties of adjutant, quartermaster, and commissary general, except in time of war or insurrection, in which case the duties of the commissary and quartermaster general shall be performed by that officer. He shall have charge of, and shall receive and issue all ordnance and ordnance stores, camp and garrison equipage, and other public property pertaining to the militia or national guard of the state, on the order of the commander-in-chief. The adjutant general shall receive for his services the sum of one thousand dollars ($1,000) per annum. He shall have charge of and carefully preserve the colors, flags, guidons, and military trophies of war belonging to the state, and shall not allow the same to be loaned out or removed from their proper place of deposit. He shall furnish, at the expense of the state, all proper blank books, blanks and forms, and such military instruction books as shall be approved by the commander-in-chief. He shall also, on or before the first day of December next preceding the regular session of the general assembly, make out a full and detailed account of all the transactions of his office, with the expenses of the same for the preceding two years, and such other matters as shall be required by the governor; and shall also report at such other times as the governor may require. He shall make such reports, returns, etc., to the war department or the president of the United States as may be required by law or regulations. He shall reside at the state capital, and shall hold his office during the pleasure of the governor. The **quartermaster** and **commissary general** shall take care of all public property belonging to his department, and when required by the commander-in-chief, shall procure transportation, supplies, subsistence, etc., for the troops. He shall make such reports and returns to the war department and the president of the United States as may be required by law or regulations, and shall annually report to the commander-in-chief, on or before the first day of December of each year, a complete inventory of such property and the place in which it is deposited, with a detailed account of all articles consumed or issued and money expended in his department not previously reported. The quartermaster and commissary general shall execute all orders given him by the commander-in-chief, and shall execute a bond with sureties to the state, to be approved by the state treasurer, in the sum of fifteen thousand dollars ($15,000), conditioned for the faithful performance of the duties of his office. The **surgeon general** shall examine and determine the candidates for regimental surgeons and hospital stewards, and shall, under the directions of the commander-in-chief, have general supervision and control of all matters pertaining to the medical department of the Nebraska National Guard. He shall prescribe the physical and mental disabilities exempting from military duty. He shall be the chief purchasing and disbursing officer of his department. He fills all requisitions, as he shall approve, made upon him for medi-ical and hospital supplies for use of sick or wounded while on actual duty, when such requisitions are made by the surgeons or assistant surgeons of regiments or detachments. He shall make such inspection in regard to the sanitary condition of encampments and care of sick in hospitals as he may deem necessary, and report in writing, on or before the first day of December of each year, to the commander-in-chief through the adjutant general. He shall keep a roster of all medical officers of the Nebraska National Guard and shall be informed by the adjutant general of all changes by commission, discharge, death, or leave of absence. The **inspector general** superintends all inspections of the national guard and militia made in compliance with the law, regulations, or the special orders of the commander-in-chief. He shall report in writing to the commander-in-chief through the adjutant general on or before the first day of December in each year, stating what has been done during the year by himself and assistants, calling attention to what is defective and suggesting remedies for existing errors. The **judge advocate general** is the legal adviser of the military department of the state of Nebraska in such matters pertaining to the government of the national guard and militia as may be referred to him by the commander-in-chief. He reviews all proceedings of court martial which require the action of the commander-in-chief, reporting thereon in writing. He brings such suits as may be required by law. He shall, on or before the first day of December in each year, make his annual report to the commander-in-chief through the adjutant general. He may be detailed by the commander-in-chief to attend any encampment, and in such case has, during the encampment, within the encampment and for a distance of one mile from the guard-line, the jurisdiction of a municipal court over all offenses committed in said time.

2213. The regiments, battalions, and companies shall constitute one **brigade** under the command of a brigadier general, appointed by the commander-in-chief; on the recommendation of the brigadier general, the governor may appoint and commission the brigade **staff** as follows: One assistant adjutant general and one surgeon, each with rank of major; one quartermaster and one commissary of subsistence, each with the rank of captain; and two (2) aides-de-camp, each with rank of first lieutenant; all of whose commissions shall expire with that of the brigadier general recommending their appointment.

2214. Each infantry **regiment** shall consist of ten companies, one colonel, one lieutenant colonel, one major, one surgeon, and one chaplain, each with the rank of captain; one adjutant, one quartermaster, one sergeant-major, one quartermaster sergeant, one hospital steward, and one chief musician, who shall be instructor of music, and two principal musicians. The adjutant and quartermaster shall be extra lieutenants, selected from the first lieutenants of the regiments.

2215. Each **company** of infantry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, four sergeants, four corporals, two musicians, all to be nominated by the company, and not less than thirty nor more than forty privates. The governor may increase the number of privates to fifty whenever the exigencies of the service may require such increase.

2216. A **troop** of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, five sergeants, four corporals, two trumpeters, two farriers, one saddler, one wagoner, and such number of privates, not exceeding seventy-eight, as the governor may direct.

2217. Each **battery** of artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster sergeant, four sergeants, four corporals, two musicians, two artificers, one wagoner, and as many privates, not exceeding one hundred and twenty-two, as the governor may direct. One first lieutenant, one second lieutenant, two sergeants, and four corporals may be added to this battery organization at the discretion of the governor.

2218. Each regiment may be provided with a **regimental band,** which shall consist of not more than twenty nor less than twelve members.

2219. No **enlistment** shall be allowed other than able-bodied male citizens of this state between the **ages** of eighteen and forty-five years. In time of peace no minor shall be enlisted without the written consent of his parents or guardians, and no allowance, pay, or compensation shall be given by the state to any enlisted man not certified by the surgeon of his regiment to be able-bodied in accordance with the standard prescribed by the surgeon general.

2220. All officers shall hold their **commissions** for the period of three years, unless sooner discharged by resignation or otherwise; but the commissions of officers of the staff of the commander-in-chief shall expire with the term of office of the governor. When an officer is re-elected or re-appointed no new commission issues, but a certificate of such election or re-appointment must be endorsed upon his original commission. Such officer shall take rank from the date of original commission. When an officer subscribes to the oath of his office and is sworn before some civil officer having authority to administer an oath, it shall constitute his muster into service unless otherwise mustered, and the date at which said oath is administered shall be considered the date of said muster.

2221. The brigade, regimental, and company **officers** shall be **chosen** from among the officers and men of the Nebraska National Guard upon recommendation of the respective commands subject to the approval of the governor, who shall issue his warrant of commission to said officers.

2222. The commandant of each company from its enlisted men shall nominate its **sergeants** and **corporals** to the commander of his regiment (on recommendation of the members of each company) who shall issue his warrant of appointment to the person nominated.

2223. The military forces of this state, when in the actual **service** of this state in time of war, insurrection, invasion or imminent danger thereof, shall receive **compensation** as follows: For the first ten (10) days or any portion thereof, privates, musicians, and non-commissioned officers, one dollar ($1) each, with one ration or commutation thereof per diem; commissioned officers to be entitled to the same pay and allowances as are at the time of said service allowed by law in the army of the United States. For a longer period of service than ten (10) days, commissioned officers, non-commissioned officers, musicians, and privates shall be entitled to and receive the same pay and allowances as are at the time of said service allowed by law in the army of the United States. Regimental surgeons, when not on regular duty with their regiments, or officers ordered on special duty by the commander-in-chief, shall receive such pay for their services as may be determined by the commander-in-chief.

2224. No officer, non-commissioned officer, musician, or private shall receive any **compensation** from the state **during** time of **peace,** except as in this act provided: *First*—The adjutant general shall receive an annual salary of one thousand dollars ($1,000), which shall be in full for all duties performed under this act. *Second*—When in attendance at annual muster or camp of instruction, the Nebraska National Guard shall receive the following compensation per diem: Non-commissioned officers, musicians, and privates, one dollar and one ration per day or commutation thereof; all commissioned officers the same pay and allowances as are allowed in the army of the United States at the time of said service to officers of like grade. For all specified day drills at other times commissioned officers actually present on duty shall receive two dollars, and non-commissioned officers, musicians, and privates one dollar per diem.

2225. If any **soldier** is wounded or otherwise **disabled,** or is killed, or dies of wounds received while doing military duty according to the law, in case of invasion, insurrection, or disturbance of the peace, he, his widow or children, shall receive from the state such just and reasonable **relief** as the legislature shall deem proper.

2226. There shall be a **military board** consisting of the adjutant general, brigadier general, two colonels commanding regiments, and the judge advocate general, who shall be commissioned as such by the commander-in-chief, and who shall hold their respective offices as members of said board during the term of office of the governor appointing them.

2227. The state military **board** shall constitute an advisory body to the commander-in-chief on all the military interests of the state; they shall audit all claims and accounts of a military character against the state, and no contract on behalf of this state for military purposes shall be valid as against the state until the same shall be approved by this board; they are hereby authorized and **empowered** to prepare and promulgate the necessary provisions, rules, and regulations for the organization, government, and compensation of the Nebraska National Guard, not inconsistent with the laws of the United States or of the state of Nebraska, and said provisions, rules, and regulations, together with such alterations or amendments as may be required from time to time, when approved by the commander-in-chief, shall be in force from the date of their publication in general orders; they shall have power to make any changes in the military organization of this state that may become necessary to conform said organization to the laws of the United States; *Provided*, That the expenses thereof to the state shall not be increased by such change.

2228. The state military board shall meet at the call of the president for the transaction of such military business as may require their attention, and in times of peace shall receive the following **compensation**: The adjutant general, such pay as is now or may hereafter be provided; the other members of the board shall be paid their actual expenses while in actual attendance at meetings of the board and five (5) cents per mile each way from their place of residence to the place of meeting by the direct and usually traveled route; *Provided*, That the total amount paid to said board shall not in any year exceed the sum of one hundred and fifty dollars ($150). A majority of said board shall constitute a **quorum** for the transaction of business. Said board shall meet in the office of the adjutant general, which shall be provided in the state house, and in which all records, books, papers, and other matters pertaining to military affairs shall be kept.

2229. The Nebraska National Guard, heretofore mentioned, shall be liable at all times to be **ordered into** active **service**, and shall be first called out by the commander-in-chief on all occasions for military service within the state, in time of war, invasion, riot, rebellion, or reasonable apprehension thereof; or upon the requisition of the president of the United States, the commander-in-chief may order out for active service such further portion of the militia as he may deem necessary, or to comply with the requisition of the president of the United States, designating the same by draft, if a sufficient number shall not volunteer, and may organize the same in the manner therein provided for organizing the Nebraska National Guard and commissioned officers therefor, and when so ordered out for service the militia shall be subject to like regulations and services from the state, and the same compensation as that prescribed for the army of the United States: *Provided*, That the Nebraska National Guard shall not be called into the service of the United States, but the members thereof are subject to be called into the service of the United States only in manner herein provided for calling the militia into active service of the United States.

2230. In case of a **draft** the commander-in-chief shall apportion it equitably among the several counties, taking care that the said apportionment shall be equitably made among the several townships or precincts of the counties, in such manner as he may prescribe. He shall, in case of any such draft, appoint a time and place of parade, and shall have such other and further power as may be necessary to carry into effect the provisions of this act relative to any such draft.

2231. The names of all male citizens of this state between the ages of eighteen and forty-five years shall **annually**, at the time of assessment of property for taxation for county and state purposes, be **enrolled** alphabetically by the township or precinct assessors of the townships or precincts in which they respectively reside; on such enrollment list, and opposite the name of every person exempt from military duty the assessor shall write the word "exempt" and the reason of such exemption, and shall sign such lists and file them in the offices of the respective county clerks at the time prescribed by law for filing and returning the assessment rolls, and the clerk shall, on or before the first day of August in each year thereafter, make a certified report thereof to the adjutant general.

2232. All persons serving three years consecutively in the Nebraska National Guards are entitled to an honorable **discharge.**

2233. The **resignation** of any staff officer shall be made to his immediate commanding officer, and if approved by him shall be forwarded to the commander-in-chief, who may accept it and grant an honorable discharge. The resignation of any other commissioned officer shall be made to the commander-in-chief through the respective company, regimental, and brigade commanders, who shall indorse their approval or disapproval thereon; *Provided*, That the resignation of an officer shall not be accepted while under charges for the commission of any offense.

2234. Each **company** and band may make **by-laws** for its government, which shall be binding on its members when approved by the commander-in-chief, and all fines and penalties imposed by such by-laws shall be collected as hereinafter provided.

2235. Upon the **organization** of any company of the Nebraska National Guard, on the requisition of its commanding officers and the approval of the governor, the quartermaster general shall furnish such company, at the expense of the state with suitable arms, armories, ammunition, **equipments,** colors, camp equipage, and transportation from its armory to the place of parade or encampment; *Provided*, That when any arms, equipments, colors, or camp equipage are delivered to any commander he shall execute and deliver to the adjutant general a bond, payable to the state of Nebraska, in a sufficient sum and with sufficient sureties, to be approved by the governor, conditioned for the proper use of said arms, equipments, colors, and company equipage, and the return of the same, when requested by the proper officers, in good order, wear, usages, and unavoidable loss and damage excepted; and that he will promptly make such returns, etc., of the property for which he is responsible, at such times and in such manner as the adjutant general may direct.

2236. The quartermaster general, on the written application of the commander of a company of state troops, shall furnish the **use of** a suitable **armory** appropriate for such arms and equipments at the expense of the state. The armory of each company shall be subject to the orders of the quartermaster general, and be under the charge of its commanding officer, who shall keep therein all property furnished the company.

2237. The commander-in-chief may from time to time require the **inspector general,** or an officer detailed for the purpose, to examine any armory, or **arms,** equipments, etc., provided as aforesaid, and to report to him the condition thereof, and of the arms, etc., therein deposited.

2238. Every commissioned **officer** shall furnish himself with a complete **uniform,** such as is prescribed for officers in the United States army of the same rank.

2239. The **regulation uniform** of the United States army is hereby prescribed for the members of the Nebraska National Guard, and all the uniforms for the members shall be furnished by the state on requisition by the commanding officer of each company, accompanied by a sworn statement of the number of men in active service and belonging to his company, which shall be made by such commanding officer upon the quartermaster general, who shall furnish such commanding officer with the uniforms.

2240. Every **uniform** so furnished by the **state** shall continue to be its **property** for three years, when it shall become the property of the company, but until such time said uniform shall remain in the company armory or room in charge of the commanding officer of such company, except when worn in the discharge of military duty; and every non-commissioned officer or private who shall neglect to return any property of the state to the officers or person in charge of the armory, when notified by the commanding officer of the company so to do, shall be fined in any sum not exceeding fifty dollars ($50), to be prosecuted and collected as in other cases of misdemeanor.

2241. The commander of each **company** shall make quarterly **reports** to the adjutant general within ten days after the expiration of each quarter, beginning with the last day of March in each year, of the condition of all arms, equipments, ordnance, ordnance stores, or other public property for which he is responsible, through the commanding officer of his regiment, and like returns shall be made by regimental commanders and all other officers responsible for public property, to be forwarded to the adjutant general through the proper channels.

2242. **Pay rolls** for services shall be forwarded in duplicate to the adjutant general within ten days after such services by the company, regiment, brigade, field and staff officers, and bands by their respective commandants, with a certificate and oath by such commandants that the persons therein named have performed the duty and is entitled to the pay therein specified. The adjutant general shall forward one of such pay rolls, if approved by himself, to the commander-in-chief within ten days thereafter, and if approved it shall be certified by him to the auditor of public accounts.

2243. The **auditor** of public accounts is hereby authorized and required, on presentation of the proper vouchers and pay roll, to **draw** his **warrant** on the state general fund and against the appropriation made by the legislature authorized by this act.

2244. The commanding officer may deduct from the pay of any member of his command the amount of all **fines,** penalties, and dues due from such member under the by-laws of such company or any provision of this act.

2245. The **adjutant general** shall **report** to the legislature, on or before the first day of each biennial session thereof, the amount of funds required to pay the officers and men, armory rent, clothing, arms and equipments, transportation, rations, forage, stationery, and fuel, and the legislature may provide by an appropriation out of the state general fund a sufficient sum of money to meet the requirements of this act.

2246. The **officers** and **men** of the Nebraska National Guard shall be **exempt** from working on roads and highways and from the payment of any poll tax levied for that purpose, and shall be exempt from sitting on any grand or petit jury within this state while an active member of the Nebraska National Guard.

2247. The Nebraska National Guard shall encamp for **instruction** not less than five nor more than ten days annually, by regiment or brigade, between the tenth day of August and the twentieth day of September, as ordered by the commander-in-chief. No member of the Nebraska National Guard will be excused from attendance except upon a surgeon's certificate of disability or dangerous sickness in the immediate family of said member. At each encampment there shall be a board of officers appointed by the commander-in-chief, to examine all commissioned officers of the guard below the rank of major (except the general staff) in the line of their respective duties, and any officer failing to pass a satisfactory examination will, after three months, be re-examined by the military board, and again failing will immediately vacate his commission. The first board appointed shall consist of five members, each member of which must be senior in rank to any officer examined.

2248. The place of **encampment** shall be designated by the proper commanding officer, subject to approval by the commander-in-chief. Orders for encampment shall be given at least twenty days prior thereto, and for **parade** at least five days prior thereto, by depositing the same in the mail, properly addressed to the person, to be notified, by leaving the same at his usual place of abode, or by reading the same to his respective commands. Each battery of artillery shall parade one day in September for drill in its own town, and the commander-in-chief may at his discretion order any battery of artillery to attend the regimental or brigade encampment. No member of the Nebraska National Guard shall be exempt or relieved from military duty by membership or service in any fire company.

2249. Every company when encamped shall have **roll call** on the first day at noon, and at tattoo; on the remaining days at reveille, at noon, and at tattoo; absence without leave from either of said roll calls shall be deemed an absence for the entire day, and so reported on the pay roll, and such report shall be forwarded to the adjutant general.

2250. The **commanding officer** of any encampment or parade may cause those under his command to perform any field or camp duties he **may** require, and may put under **arrest** during such encampment or parade any member of his command who may disobey a superior officer, or be guilty of disorderly or unmilitary conduct, or any other person who may trespass upon the parade or encampment grounds or molest the orderly discharge of duty by the members of his command; and he shall prohibit the sale of all spirituous and malt liquors within one mile of such parade or encampment.

2251. The brigadier general shall direct such **target practice** at the annual parade or encampment, as he may deem expedient, and shall attend such encampment and report the conduct and discipline thereof to the commander-in-chief, who, if he shall judge that the encampment has been prejudicial to good morals or military discipline in any regiment, shall not permit another encampment of such regiment until its commanding officer has resigned or been removed.

2252. The commanding officer of each encampment shall make a **requisition** on the quartermaster general at least ten days prior thereto, **for** the necessary transportation, **tents,** blankets, camp equipage and supplies therefor, and if approved by the commander-in-chief the quartermaster general shall furnish the same.

2253. Each organized **company,** troop, or battery of the Nebraska National Guard shall **drill** one day in each of the months of April, May, June, July, and August, the time and place to be designated by the company commander, and a report thereof made to the proper authority within ten days thereafter. The commander of each regiment shall make like returns, together with a roster of his officers, to the brigadier general within twenty days after each encampment or parade, who shall make a like return for the brigade, with a roster of its officers, to the adjutant general within thirty days after such parade or encampment. The adjutant general may order from each company or regiment such additional returns and muster rolls as he may deem expedient.

2254. Regimental, company, battery, or troop commanders may order as many **evening drills** of their command as they may think necessary for proper instruction and drill.

2255. The governor may order **courts martial** for the trial of officers and enlisted men of the National Guard, on proper charges and specifications, the proceedings of which shall be as provided by the state military board, conforming to the regulations, articles of war, and practice for the government of the army of the United States, as near as may be; and the governor, in ordering a court martial, shall detail a judge advocate for the same.

2256. Regimental and batallion **courts martial** may be convened by order of commandants of regiment or battalions, approved by the governor, under such regulations as the military board may prescribe. The proceedings, findings, and sentences of all courts martial shall, unless otherwise ordered by the governor, be reviewed by the judge advocate general, and approved or disapproved by him.

2257. The **president of** a **court** martial may issue subpœnas, enforce the attendance of witnesses, and punish a refusal to be sworn or to answer, as provided in civil actions.

2258. Commandants of companies, troops, or batteries may appoint **courts of discipline,** under rules and regulations prescribed by the state military board, for the trial of members of their respective companies, troops, or batteries, for violation of the militia law, the general code of regulations, or the authorized by-laws of their companies, troops, or batteries.

2259. When **fines assessed** by courts martial or courts of discipline are not paid within ten days after the sentence is approved by the reviewing officer and returned to the commandant, a list thereof and of the delinquents shall be placed in the hands of a justice of the peace within the counties in which the delinquents respectively reside, who shall thereupon issue process and render judgment upon proof against such delinquents, separately, together with the costs of the suit, and shall issue **execution thereon,** without stay, directed to any constable of the proper township, who shall collect the same without exemption.

2260. **Dues** levied by the by-laws of any organization may be **collected by civil suit,** without right of stay or exemption; and all suits for the collection of fines or dues shall be brought in the name of the state of Nebraska, for the use of the company, troop, or battery; but in no case shall the state pay any costs of such suit.

2261. It shall not be lawful for any body of men whatever, other than the regular organized volunteer militia of this state, and the troops of the United States, to associate themselves together as a **military company** or organization, or to drill or parade with arms in any city or town in this state **without** the **license** of the governor thereof, which license may at any time be revoked; *And provided further*, That students in educational institutions where military science is part of the course of instruction may, with the consent of the governor, drill and parade with arms in public under the superintendence of their instructors, may take part in any regiment or brigade encampment, under the command of their military instructor, and while so encamped shall be governed by the provisions of this act. They shall be entitled only to transportation and subsistence, and shall report and be subject to the commandant of such encampment; *Provided*, That nothing herein contained shall be construed so as to prevent benevolent or social organizations from wearing swords.

2262. Whoever offends against the provisions of the preceding section, or belongs to, or parades with, any such **unauthorized body** of men with arms, shall be punished by a **fine** not exceeding the sum of ten ($10) dollars or by imprisonment in the common jail for a term not exceeding six months, or both.

2263. Any commissioned **officer** of the several commands shall have the ordinary **powers of** a sheriff **to arrest** any officer or enlisted man for the commission of any crime punishable under the laws of the state, while on any duty authorized by this act, and may proceed against any such offender by information or complaint before any court of law having cognizance of such offense, and may call to his aid as many of his men as may be necessary to make such arrest.

2264. For the purpose of carrying out the provisions of this act, there is hereby appropriated, out of the general fund not otherwise appropriated, the sum of thirty thousand dollars ($30,000) the first year, and twenty thousand dollars ($20,000) each succeeding year (or so much thereof as may be necessary) until otherwise provided by law. The **appropriations** made by this section shall be available for the two years ending March 31, 1889, and shall be in addition to the appropriations made under the provisions of an act entitled "An act making appropriations for the current expenses of the state government for the years ending March 31, 1888, and March 31, 1889, and to pay miscellaneous items of indebtedness owing by the state of Nebraska."

2265. The governor shall be **commander-in-chief** of the militia, and may employ it, or any part of it in the defense of or relief of the state, or any part of its inhabitants or territories, and shall have all the powers necessary to carry into effect the provisions of this act,

Sec. 2266. Joint resolution relative to drawing of Nebraska quota of arms and equipments from the government of the United States." 1885, p. 437.

2266. WHEREAS, by act of congress, the state of Nebraska is entitled to receive from the government **arms** and equipments for the use of the state militia, and that there is now the sum of six thousand six hundred dollars to the credit of this state on account of said act: Therefore, *Be it resolved by the House of Representatives, the Senate concurring:* That it is the sense of this legislature, that in the drawing of Nebraska's quota of said arms and equipments, that as a portion thereof two hundred **hospital tents** for the use of the militia of this state be drawn by the governor, and that the governor may allow the use of such tents at encampments of such militia and at reunions of old soldiers in this state.

CHAPTER 32.—MILLS AND MILL-DAMS.

Secs. 2267 to 2299. "An act relating to mills and mill-dams." 1873. In force February 26. G.S., p. 472. (Repealing ch. 36, R.S. 1866, p. 262.)

2267. If any person, desiring to erect a **dam** across any water-course for the purpose of building a water grist, saw, carding, or fulling mill, or of erecting any machinery to be propelled by water, be the owner of the lands on which he desires to build such mill or erect such machinery, on one side of such water-course, and not of the lands on the opposite side against or upon which he would abut his dam; or, if any person be the owner of the lands, on which he desires to erect any such mill or machinery on both sides of such water-course; or, if any person shall have erected such mill and mill-dam on his own lands, he may file a petition for leave to build or continue such mill-dam and for a writ **of ad quod damnum** in the district court of the county where such lands lie, against the owners or proprietors of the lands above and below such dam, which are, or probably will be, overflowed or injured thereby, or against or upon which he may desire to abut his dam.

Object of this law is to utilize the water power of the state and not to create monopolies. **13**, 550 (14 N. W., 524). Where *ad quod damnum* proceedings are compromised by owners leasing part of land, lessee acquires a vested right in stream and water, free from lessor's interference. **27**, 323–5 (43 N. W., 237). Where A in good faith commenced the erection of a mill, of which B had notice, and to which he made no objection, B cannot, after A has expended a considerable sum on his mill, enjoin A from erecting a dam, the effect of which would be to flow the water back on an unoccupied mill site owned by B. **10**, 460 (6 N. W., 755).

2268. The plaintiff shall set forth in his **petition**, as near as may be, the place where such dam is built, or proposed to be built, the height or proposed height of such dam, the kind of mill built or proposed to be built, his title to the lands whereon he has erected or proposes to erect such mill or machinery, whether legal or equitable, and shall describe with certainty the lands above and below such dam, the property of others which are, or will probably be, overflowed or injured as aforesaid, and shall give the name of the owner of each tract, or, if the name of any such owner be unknown, the plaintiff shall so state in his petition.

Water grist mill is a work of internal improvement and bonds voted for it are valid. **14**, 330 (15 N. W., 690). See **26**, 722 (42 N. W., 877).

2269. The court may thereupon order the clerk to issue the **writ**, directed to the sheriff, commanding him to make out a list of twenty-four disinterested freeholders of the county and return the same to the clerk of said court forthwith; and to notify each of the defendants, if found within the county, that the plaintiff, naming him, has filed his petition against the defendants, naming them in said court, for leave to build or continue his mill-dam at the place stated in the petition, to be set forth in said writ or notice, and that a writ of *ad quod damnum* has been **granted** by such court, and of the day and term when the same was granted, and that they are required to appear at the office of said clerk, on a day and hour to be fixed by the sheriff, and named in said **notice**, and then and there, in the presence of the said clerk, to strike, alternately with the plaintiff, a jury of inquest; and further commanding said sheriff to summon and impanel the jury so struck to meet on the lands where such dam is built or proposed to be built, on a day and hour to be named by the court, and inserted in the order granting the writ, then and there to inquire and report of the matters to be given them in charge.

2270. The **notice** to be **served** upon the defendants as aforesaid shall be in writing, and shall be served at least ten days before the time fixed for striking the jury, by delivering a copy to each defendant **personally** or by leaving such copy at his usual place of residence.

2271. If any defendant's name be unknown, or if he be not a resident of the county, the plaintiff may, at the time he brings his petition, or at any time thereafter, file with the clerk an affidavit to that effect, and thereupon may obtain **service** upon such non-resident or unknown defendant **by publication.** The publication must be made four consecutive weeks in some newspaper printed in the county where the petition is brought, or if no newspaper be printed in such county, then in some newspaper printed in the state and of general circulation in the county. It must notify the defendant of the time when the petition was filed, of the object and purpose thereof, of the place where the dam has been or is proposed to be built, as near as may be, of the term when said petition will stand for hearing, and must contain an accurate description of the lands owned by such defendant that are likely to be overflowed or injuriously affected, or against or upon which it is proposed to abut such dam, as the case may be. Such publication must be completed at least one term before the final adjudication in the matter.

2272. Should any of the lands, likely to be overflowed or injured, or upon or against which it is proposed to abut such dam as aforesaid, be **public lands** of the state, the court may direct the prosecuting attorney to see that the interests of the state are protected, or may appoint some suitable person to act in his stead, who shall be sworn faithfully and impartially to discharge his duties as attorney for the state in the matter, and who shall be paid a fee, not to exceed twenty-five dollars, to be taxed as costs to the plaintiff.

2273. On the day fixed for striking the **jury** as aforesaid, the plaintiff and defendants, or their agent or attorney, shall alternately, in the presence of the clerk, strike out one name from said list of twenty-four, until but twelve remain, and such twelve shall be the jury, and the clerk shall certify their names to the sheriff. Should the defendants fail to appear, or should they refuse or fail to strike, or if they are unable to agree on any name or names to be struck from said list, in their turn the clerk shall strike in their stead.

2274. The **jury** so struck shall be summoned and impaneled by the sheriff, and, being sworn faithfully and impartially to inquire and report of the matters to be given them in charge, shall be **charged** by the sheriff, as the circumstances of the case may require, substantially as follows: *First*—To view the land proposed for an abutment and to locate and circumscribe by metes and bounds one acre thereof, having due regard therein to the interests of both parties, and to appraise the same according to its true value. *Second*—To examine the lands above and below the property of others, which are or may probably be overflowed or injured, and say what damage it has been and will be to the several defendants, naming them, and whether the mansion house of any such defendant or defendants, or the offices, curtilages, or gardens thereunto immediately belonging, will be overflowed or injured. *Third*—To inquire whether, and in what degree, fish of passage, or ordinary navigation will be obstructed, and whether, in their opinion, the health of the neighborhood will be annoyed by the stagnation of the water. *Fourth*—Whether, and by what means, any such obstruction, annoyance, or injury can be prevented. *Fifth*—Whether such mill is, or will be, of public utility.

2275. The **inquest** so made, being signed by the jurors, shall, together with the writ, be forthwith **returned** by the sheriff to the office of the clerk of such court. Should such return be made in vacation, the defendants, or any of them, shall have until the first day of the next term to show cause why the plaintiff should not have leave to build or continue his said mill-dam. Said time may be extended by the court on good cause shown. If the return be made in term, the court shall, by order, fix a reasonable time within which such cause may be shown.

2276. Any **person interested** in or affected by any inquest or proceeding provided for in this act, may, on motion, and proper showing, be made a defendant therein; and the court may permit **amendments** of the proceedings, and allow new parties to be brought in, on motion of the plaintiff, as in other cases.

2277. Any defendant may, after the return of the sheriff, aforesaid, traverse, by way of answer, any material fact stated in the petition or inquest, or he may plead any valid matter in bar of the plaintiff's right to have the benefit of the writ; or he may file exceptions for substantial defects to the writ, the inquest, or any of the **proceedings** herein provided for; and issues of law and of fact may be made up and tried as in other cases; and the court may quash the writ, or set aside the inquest, and may award a new writ on payment of all costs by the party who has built, or proposes to build, such mill-dam, or the court may dismiss the proceedings, or may ratify and confirm such inquest.

2278. **[Finding.]**—If on such inquest or trial it shall appear to the court that the mill or appurtenances thereunto belonging, or the mansion house of any defendant, or curtilage or garden thereunto immediately belonging, will be or has been overflowed or injured, or the health of the neighborhood annoyed, they shall not give leave to build or continue such mill-dam; but, if none such injuries have accrued, nor will be likely to accrue, they shall proceed to adjudge whether, under all the circumstances, it be just and reasonable that such leave be given or not given.

2279. In case such petition be filed by the **plaintiff**, after **having erected** his **mill-dam**, no damages shall be allowed, and the application shall be dismissed, unless the case be such that leave would have been given to build such mill-dam, if such petition had been brought before the erection thereof.

2280. Where any person may have built a mill or other dam whereby the water of any river, creek, run, or spring may be rendered stagnant, or any **lands** may be **overflowed** or injured thereby, any person or any number of **persons** interested therein, or who may be **damaged** by the stagnation or overflowing of said water, or otherwise, may file a **petition** against the owner of such mill-dam for such writ, and like proceedings shall be had *mutatis mutandis*, as where the owner of a mill-dam so built brings the petition. But such owner shall have ten days' previous notice of the filing of the petition.

Remedy provided by this section exclusive of *ad quod damnum* proceedings, and alleged errors in latter will not warrant a reversal of proceedings had under this section. **29**, 768 (46 N. W., 281). See **26**, 722 (42 N. W., 877).

2281. If the petition is brought to obtain leave to build a **mill-dam**, and such leave is granted, the plaintiff shall, upon paying respectively to the persons entitled, the value of the **acre** so located and the damages assessed on the inquest aforesaid, become seized in **fee-simple** of the said acre of land; but if he shall not, within one year after the final adjudication, begin to build said mill, and finish the same within three years, and afterwards continue it in good repair for public use, or, in case said mill and dam, or either of them, be destroyed, if he shall not begin to rebuild the same within one year after such destruction, and finish the erection thereof within three years thereafter, the said acre of **land** shall **revert** to the former proprietor and his heirs, unless at the time of such destruction the owner of such mill be an infant, or imprisoned, or of unsound mind, in which case the length of time above specified shall be allowed after such disability is removed.

2282. Where the petition is brought against the owner of a **mill-dam** already **built**, as provided in section fourteen of this act, and the mill is found to be of public utility, or where the petition is brought to obtain leave to build or continue a mill-dam, the jury shall assess such **damages** as the party or parties injured may have sustained and will sustain by the erection and continuance of such mill-dam. But where the petition is brought against the owner of a mill-dam as aforesaid, and such mill is not found to be of public utility, no damages shall be assessed for injuries which may accrue by the continuance of such mill-dam.

Rule and extent of damages. 17, 578 (24 N. W., 217).

2283. Where the petition is brought to obtain **leave to build** or continue a **mill-dam,** and such leave is granted, or where it is brought against the owner of a mill-dam as aforesaid, the court may render judgment for the **damages** assessed against the person owning or proposing to build such mill; and such assessment of damages, when fully paid and satisfied, after confirmation thereof by the court, shall bar a recovery for any damages or injury sustained previous or subsequent to such inquest in any and every action at law; *Provided, however,* That where the petition is brought against the owner of a mill-dam already built as aforesaid, unless the mill is found to be of public utility, such assessment, though paid and satisfied, shall not bar a recovery for damages or injuries which may accrue thereafter.

2284. The **damages** assessed upon **public lands** of the state shall be collected as in other cases, and paid into the state treasury to the credit of the proper fund.

2285. Should any of the **defendants** to the petition be **infants,** the proceedings shall be conducted in all respects as if such infants were of full age; but the court shall appoint some suitable and discreet person not of kin to the plaintiff, to act as guardian *ad litem* for such infants. Such guardian *ad litem* shall appear and defend for such infants, but no confession, admission, or default on his part shall prejudice or affect their rights or interests.

2286. Should no resistance be made to proceedings brought under this act to obtain leave to build or continue a mill-dam, the **costs** shall be adjudged against the plaintiff; but if such proceedings be resisted in any stage thereof, the court shall equitably adjust the costs which are caused by such resistance, having regard to the event.

Plaintiff liable for costs where no resistance made to proceeding. 17, 423 (23 N. W., 9).

2287. Should any of the **jurors** so summoned **fail to appear** at the time and place appointed for the inquest, the sheriff shall forthwith prepare a list of three disinterested freeholders of the county for each juror so in default, and of the list so prepared, the plaintiff, and defendants, their agent or attorney, shall alternately, in the presence of the sheriff, strike out one name till but the number required to fill the panel remains. If the defendants fail to appear, or should they refuse or fail to strike, or if they are unable to agree upon any name or names to be struck from said list in their turn, the sheriff shall strike in their stead. The sheriff shall forthwith summon the freeholders so chosen, and the same proceedings shall be thereupon had as when all the jurors appear.

2288. The sheriff shall in his return report to the court the name of any **juror** so **in default** as aforesaid, and on motion of the plaintiff, such defaulting juror may be attached as for contempt, and unless, when brought before the court, he then and there purge himself of such contempt to the satisfaction of the court, he may be adjudged to pay the **costs** incurred by reason of his said default, and to stand committed until the same are paid; and unless he voluntarily appear to purge himself as aforesaid, he shall in any event, pay the costs of such attachment.

2289. Each **juror** shall be **allowed** one dollar for each day's attendance upon such inquest, and other costs shall be allowed as in other cases.

2290. [**Mills—Protection.**]—When the water backed up by any mill-dam belonging to any mill or machinery is about to break through or over the banks of the stream, or to wash a channel so as to turn the water of such stream, or any part thereof, out of its bed or ordinary channel, whereby such mill or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he do not own such bank or banks or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments, fortifications, and other works as shall be requisite to prevent such water from breaking through or over the bank or banks of such stream, or washing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage.

See 27, 324 (43 N. W., 237).

2291. Nothing contained in the last preceding section shall be construed to bar the owner of such bank or banks, or **lands** lying **contiguous** thereto, from recovering the amount of any **injury** which he may have actually and in fact sustained by the erection or repair of such embankment, fortification, or other works.

2292. If any person shall **injure,** destroy, or remove any such **embankment,** fortification, or other works, the owner or occupier of such mill or machinery may recover of such person all **damages** which he may sustain by reason of such injury, destruction, or removal.

2293. All **mills** within this state, now in operation or which hereafter may be put in operation, for grinding wheat, rye, or corn, or other grain, and which shall grind for toll, shall be **deemed public** mills.

2294. [**No discrimination.**]—The owner or occupier of every public mill within this state shall grind the grain brought to his mill as well as the nature and condition of his mill will permit, and in due time as the same shall be brought.

2295. The owner or occupier of every public mill shall cause a statement of the **rates of toll** by him charged for grinding and bolting the different species of grain to be **posted** in at least two conspicuous places within the mill; and such statement shall be either written or printed in a plain and legible manner, and the county commissioners of each county shall establish and regulate the amount of toll allowed to be charged.

2296. He shall keep in his mill an accurate half bushel **measure** and an accurate set of toll dishes.

2297. He shall be **accountable** for the safe keeping of all grain received in his mill for the purpose of being ground, with the bags or casks containing the same, and shall, when required, deliver the same, or the flour or meal thereof, to the owner, or his or her agent, or order, or servant, with the bags or casks in which the same was received; *Provided,* That such miller shall not be accountable for any bags or casks, unless the same be distinctly marked with the initial letters of the owner's name, nor for the loss of grain, bags, or casks which shall happen by unavoidable accident.

2298. Any owner or occupier of any public mill who shall, by himself or agent or servant, take a **greater rate** of toll than that inserted in the statement required in section twenty-nine, or shall in any manner fail to comply with the provisions and requirements of this act, shall forfeit to the party injured the sum of twenty dollars, which **penalty** may be sued for and recovered before any court of this state having jurisdiction thereof.

2299. Any owner or occupier of any **public mill** may, by giving thirty days' notice in writing, **change** such public mill **into** a **private** one; such notice shall be posted on the mill, and in at least two other conspicuous places within the county; *Provided, however,* That such mill shall no longer grind for toll after expiration of the date of said notice; *Provided,* That no party shall change his mill to a private mill until fully reimbursing all parties who have assisted in its erection.

CHAPTER 33.—MINERALS.

Secs. 2300 to 2303. "An act to encourage the opening and development of coal and other mineral interests in the state of Nebraska." 1875, p. 156. In force February 23.

2300. That all tools and implements and machinery used solely in opening and working any coal mine situated in the state of Nebraska shall, for the term of three years after the passage of this act, be exempted from taxation.

2301. That when it shall be made apparent to the governor of Nebraska by affidavit of the owner or owners thereof, that a vein of coal not less than twenty-six inches in depth, and of sufficient capacity to pay to mine, and within paying distance from the surface, has been discovered, or vein of good iron ore eighteen inches thick, it shall be the duty of the governor to appoint a suitable person to examine the same, whose duty it shall be to report the probable extent and capacity of the vein, or veins, upon personal examination and measurement of said vein or veins, all expenses for said examination to be paid for by the owner, or owners, of said mines. Said report being satisfactory to the governor, he shall direct the auditor to draw an order on the treasurer for the sum of four thousand dollars, to be paid to the owner, owners, of said mine of coal, and of two thousand dollars, for a vein of iron ore one foot thick; if the vein of coal discovered should be three feet in depth, four thousand dollars, and of the required capacity. Said orders to be paid out of the general fund of the state treasury, as above directed.

2302. It shall be the duty of the persons prospecting for coal or iron ore, carefully to preserve specimens of each strata through which its shafts are sunk, or borings are made, and if the bonus is obtained, on the conditions before mentioned in this bill, to deposit the same, properly labeled, in care of the department of the state for the future use of the commonwealth.

2303. The provisions of this act shall not apply to any veins of coal already discovered nor shall any bonus be paid for striking the same vein within twenty-five miles.

Secs. 2304 and 2305. "An act to authorize counties to issue bonds to aid in boring for coal in their respective counties." 1873. In force March 3. G. S., p. 249.

2304. The board of county commissioners of each county in this state are hereby authorized and required to submit to the legal voters thereof, on presentation of a petition of twenty resident freeholders of said county, the proposition to issue bonds, not exceeding twenty thousand dollars, the proceeds of which shall be applied to defray the expenses of boring and prospecting for coal in their respective counties under the direction of the commissioners thereof, and said boards are hereby anthorized to issue the said bonds for said purposes, in case the vote shall be favorable to the proposition; *Provided, however,* That said commissioners may, in their discretion, refuse to submit such inquiry to a vote of the people until the next general election after the presentation of such petition.

2305. **[Law governing.]**—The act entitled "An act to enable counties, cities, and precincts to borrow money upon their bonds, or to issue bonds to aid in the construction or completion of works of internal improvements in this state, and to legalize bonds already issued for such purpose," approved February 15, 1869, so far as applicable, shall govern the proceedings to submit said proposition, issue said bonds, and provide for payment of the same; *Provided,* This act shall not apply to the counties of Burt, Washington, and Sarpy.

CHAPTER 34.—MONEY.

Secs. 2306 and 2307 formed secs. 1 and 2, ch. 37, R. S. 1866, p. 269.

2306. [**Denominations.**]—The money of account of this state is the dollar, cent, and mill, and all public accounts, and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denomination.

2307. [**Change of.**]—The above provisions shall not in any manner affect any demand expressed in money of another denomination; but such demand, in any suit or proceeding affecting the same, shall be reduced to the above denomination.

CHAPTER 35.—MUNICIPAL CORPORATIONS.

I. METROPOLITAN CITIES.

Secs. 2308 to 2476. "An act incorporating metropolitan cities, and defining, regulating, and prescribing their duties, powers, and government." 1887, p. 105. In force March 30.*

2308. That all **cities** in the state of Nebraska, now having a population of eighty thousand inhabitants, or more, and all cities which shall hereafter have attained a population of eighty thousand inhabitants, or upwards, shall be considered and known as cities of the **metropolitan class** and shall be governed by the provisions of this act.

Limit raised from 60,000 in 1889, p. 148. The classification of cities into classes and subclasses according to population is not repugnant to the constitution. **16,** 74 (19 N. W., 470). An act providing for the incorporation of a city must be regarded as a whole, and the city deriving the benefits therefrom must perform the duties required by law. **5,** 451.

2309. Whenever any city shall hereafter have attained a **population** of ***sixty** thousand inhabitants, or upwards, and such fact shall have been ascertained by any national or state census, and shall be so certified to the governor by the mayor of such city, it shall thereupon be the duty of the governor by public **proclamation** to declare such city to be of the metropolitan class, and thereupon such city shall be subject to the provisions of this act.

* This would appear to be inconsistent with sec. 1 as amended 1889, but the wording of this section has not been expressly changed.

2310. The **corporate limits** of any city of the metroplitan class shall be fixed and determined by the mayor and council of such city, by ordinance, within one year after the passage of this act, or within one year after being proclaimed by the governor a city of such class, the said corporation limits to include an area not to exceed twenty-five square miles, including any township or village organization within such limits, which organization shall thereupon cease and terminate, and after said corporate limits have been so fixed and determined, the same shall not be changed until the population of such city shall have increased at least twenty thousand, as shown by a state or national census, whereupon the mayor and council of any such city may extend said corporate limits such distance as may be deemed proper in any direction not exceeding one mile; **Provided,* That any city of the first or second class, or any incorporated city, adjoining any city of the metropolitan class, may be included in and become a part of such city of the metropolitan class, upon proposition to be so attached and included being approved by a majority of the voters in each of the said cities voting on such proposition, upon such terms as may be stated in such proposition, after being submitted to the voters of each of said cities, by ordinance passed by the mayor and council of each of said cities.

All after * added 1889, p. 90.

2311. The **corporate name** of each city, organized under or governed by this act, shall be "The city of ———," and all and every **process** or notice whatever, affecting any such city shall be **served** upon the mayor, or acting mayor, or in the absence of both of said officers from the city, then upon the city clerk.

2312. **No right** of property **accrued** to any city, corporation, or person under any law heretofore in force shall be **affected** by this act, and all city ordinances now in force and not repugnant to the provisions of this act shall remain and continue in force until altered or repealed by the mayor and council.

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*This was the original act relative to metropolitan cities, but has been by later legislatures subjected to numerous changes, which are noted as usual at the end of each amended section. Secs. 31, 52, 53, and 106 repealed.

2313. Each city governed by the provisions of this act shall be a body corporate and politic, and shall have **powers**: *First*—To sue and be sued. *Second*—To purchase and hold real and personal property for the use of the city, and real estate sold for taxes. *Third*—To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be conducive to the interests of the city. *Fourth*—To make all contracts and do all other acts in relation to the property and concerns of the city, necessary to the exercise of its corporate or administrative powers. *Fifth*—To exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and council of such city as hereinafter set forth, except when otherwise specially provided.

2314. Each city governed by this act shall be divided into **wards**, not less than six nor exceeding ten in number, the boundaries of which shall be defined by ordinance. Said wards shall be equal in population, as near as may be.

2315. Whenever fifty or more legal voters of any ward in such city shall petition the mayor and city council thereof to divide such ward into two or more polling or **voting districts**, and it shall be made to appear that said ward contains more than four hundred legal voters, the said mayor and city council, on presentation of said petition, shall by ordinance divide such ward into two or more election districts, and appoint judges and clerks of election for such polling or voting districts, as now appointed for the elections held in the wards.

2316. **Precinct lines** in that part of the county embraced within the corporate limits of a city of the metropolitan class shall correspond with the ward lines in such city, and such precincts shall correspond in number with the wards of the city, and be co-extensive with the same; *Provided*, That when a ward is divided into two or more election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts.

2317. At all **elections** authorized by this act, the polls shall be opened at such place in election district as may be designated by the mayor, or as fixed by ordinance and they shall be kept open between the hours specified by law for general state and county elections, and shall be conducted in accordance with the provisions of such law.

2318. The general **city election** in all cities governed by this act shall be held on the Tuesday succeeding the first Monday in November, 1891, and every two years thereafter, except as otherwise hereinafter specified. Such election shall be held at the same **place** as are general elections for the state and county officials occurring in such years. The **officers** to be elected at such election shall be a mayor, police judge, city clerk, treasurer, and comptroller. They shall each and all be elected by a plurality of all votes cast at said elections for such officials, and shall, when properly qualified, hold office for the **term** herein designated, commencing on the first Tuesday in January succeeding said election, or until their successors shall be elected and qualified. The terms, powers, or authority of any official herein named elected at any city election held in December shall not be affected or prejudiced by reason of the fixing of the date of holding city elections, as herein specified.

Amended 1891, p. 79.

2319. The **council** of each city governed by this act shall consist of one member from each ward, and an equal **number** from the city. Each councilman, before entering upon the duties of his office, shall be required to give a **bond** to the city, with two or more good and sufficient sureties, who shall each justify that he is worth at least five thousand dollars ($5,000) in real estate in such city, over and above all debts, liabilities, and exemptions. Such bond shall be in the sum of five thousand dollars ($5,000) and shall be conditioned for the faithful discharge of the duties of the councilmen giving the same, and shall be further conditioned that* if said councilman shall vote for any expenditure or appropriation of money, or the creation of any liability in excess of the amount allowed by law, that* such councilman and the sureties signing said bond shall be liable thereon. Said bond shall be filed with and approved by the mayor.

Amended 1889, p. 90; 1891, p. 74.

2320. In all cities of the metropolitan class, now existing or hereafter created, the qualified voters of such city at the general election to be held in 1891, and every two years thereafter, shall by a plurality of all votes cast for such officials elect a number of councilmen equal to the number of wards in said city who shall be known and designated as **councilmen at large**; and who shall hold office for the term of two years from the first Tuesday in January following said election or until their successors are elected and qualified. At an election which shall be held in 1892 and every two years thereafter, and in the manner herein designated, there shall also be elected one councilman from each ward who shall be designated **ward councilman**; they shall each hold office for the period of two years from the first Tuesday in January succeeding such election. Whenever by reason of an increase of wards in such city, or by reason of being proclaimed a city of said metropolitan class, any ward shall be without representation, it shall be lawful and proper at the next succeeding general city election, or at a special election the call for and holding of which is hereby authorized, to elect ward councilmen for such wards, and also to elect a number of councilmen at large equal to the number of new or additional wards created. The terms of such ward councilmen, or councilmen at large, shall be so stated and adjusted as to correspond with the terms of councilmen of the same class elected in 1892 and succeeding years as herein above designated. The councilmen at large and the ward councilmen shall constitute the city council, and no member shall be eligible to more than two consecutive terms. Ward councilmen shall be residents of the wards from which they may be elected. All councilmen's terms of office shall commence on the first Tuesday in January after their election, except such councilmen as may be elected at the special election herein authorized, whose terms shall commence immediately after the result of such election shall be declared. On said first Tuesday the councilmen shall assemble together and organize the city council. The terms, powers, or authority of any official herein named elected at any city election held in December shall not be affected or prejudiced by reason of the fixing the date of holding city elections as herein specified.

Amended 1891, p. 75.

2321. The **qualifications of electors** in the several wards shall be the same as is required for electors in precincts under the laws of the state. A meeting of the council shall be held the first Monday after each city election, at which meeting the **returns** shall be **canvassed**, and it shall cause the clerk to make out and deliver certificates of election to the persons found to be elected, and a neglect of any such officer to qualify within ten days after the delivery to him of such certificate shall be deemed a refusal to accept the office to which he may have been elected. No person shall be eligible to any elective city office unless he is a qualified voter in the city at the time of his election.

2322. The **mayor and council** of each city created or governed by this act, shall have the care, management, and control of the city, its property and finances, and shall have **power** to pass, amend, or repeal any and all ordinances not repugnant to the constitution and laws of this state, necessary or proper to execute or carry into effect any of the provisions hereof, or any of the powers herein granted, except as otherwise herein provided.

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*So in original.

2323. The mayor and council shall have power to provide for the **election** of city officers, and to prescribe the manner of conducting the same, and the returns thereof, and the registration of voters, and for deciding contested elections in any manner not in conflict with existing laws, also to provide for filling such **vacancies** as may occur **in** the **office** of councilmen, or other elective office of the city, by calling special elections for that purpose, also to provide for removing officers of the city for misconduct, incompetency, or for malfeasance in office.

2324. The mayor and council shall have **power to create** any **office,** or employ any agent they may deem necessary for the government and best interest of the city, and to prescribe and regulate the duties, powers, and compensation of all officers, agents, and servants of the city not herein provided for. But all such agents, officers, and servants employed or appointed under this act, so far as practical, must be qualified voters of said city.

Amended 1889, p. 91.

2325. The mayor and council shall have power to require of all **officers** or servants elected or appointed in pursuance of this act, **to give bond** and security for the faithful performance of their duties. No officer shall become security upon the official bond of another, or upon any bond executed to the city.

2326. The mayor and council shall have power to require from any **officer** of the city at any time, a **report** in detail of the transactions in his office, or any matter connected therewith.

2327. The mayor and council shall have power to provide for the punishment of persons **disturbing** the **peace** and good order of the city by clamor and noise, by intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places, or otherwise violating the public peace by indecent and disorderly conduct, or by lewd and lascivious behavior.

2328. The mayor and council shall have power to provide for the **punishment of vagrants,** tramps, common street beggars, common prostitutes, habitual **disturbers of** the **peace,** pick-pockets, gamblers, burglars, thieves, watch stuffers, ball game players, persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves.

2329. The mayor and council shall have power to restrain, **prohibit,** and suppress tippling shops, houses of prostitution, opium joints, or dens, gambling houses, prize fighting, dog fighting, cock fighting, and other **disorderly houses and practices,** all games and gambling and desecration of the Sabbath (commonly called Sunday), and all kinds of indecencies; also to regulate and license or prohibit the keeping and use of billiard tables, ten pin or ball alleys, shooting galleries, and other similar places of amusements, and to prohibit and suppress by ordinance all lotteries and gift enterprises of all kinds under whatsoever name carried on.

2330. The mayor and council shall have power to make and **enforce all police regulations** for the good government, general welfare, health, safety, and security of the city and the citizens thereof, in addition to the police, powers expressly granted herein, and in the exercise of the police power may pass all needful and proper ordinances; and shall have power to impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof, and in default of payment, to provide for the confinement in the city or county prison, work-house, or other place of confinement with or without hard labor as may be provided by ordinance.

Amended 1891, p. 76.

2331. The mayor and council shall have power to prevent horse racing and immoderate driving or riding in the streets, and to compel persons to fasten their horses or other animals attached to vehicles while standing in the street.

2332. The mayor and council shall have power to adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property.

2333. The mayor and council shall have power to punish and prevent the carrying of concealed weapons, the discharge of fire-arms or fire-works of any description in any of the streets, alleys, or public grounds, on, about, or in the vicinity of buildings.

2334. The mayor and council shall have power to prevent any person or persons from bringing, depositing, having, or leaving upon or near his premises or elsewhere within the city, any putrid or diseased carcass, or any putrid, diseased, or unsound beef, pork, poultry, fish, hides, or skins of any kind, or any other unwholesome substance, and to compel the removal of the same at the expense of such person or persons.

2335. No owner of real estate within the incorporate limits of such city shall have the right or be permitted to subdivide said real estate into blocks and lots or parcels, without first having obtained from the city engineer a plat or plan for the avenues, streets, and alleys, to be laid out within or across the same, and such plat or plan of the avenues, streets, and alleys shall be made so that such avenues, streets, and alleys, as far as practicable, shall correspond in width, name, and direction, and be continuous of the avenues, streets, and alleys in the city contiguous to or near the real estate to be subdivided as aforesaid, and the mayor and council shall have power to compel the owner of such real estate, in subdividing the same, to lay out and dedicate to the public the avenues, streets, and alleys to be within or across such real estate in accordance with said plat or plan, and shall further have the power to prohibit the selling or offering for sale any lots or parts of such real estate not subdivided and platted as herein required. Any and all additions to be made to the city shall be made so far as the same relates to the avenues, streets, and alleys therein, under and in accordance with the foregoing provisions.

Amended 1889, p. 91.

2336. The mayor and council shall have power to require any and all lots or pieces of ground within the city, to be drained, filled, or graded, so as to prevent stagnant water, banks of earth, or any other nuisance accumulating or existing thereon; and upon the failure of the owners of such lots or pieces of ground to fill, drain, or grade the same when so required, the council may cause such lots or pieces of ground to be drained, filled, or graded, and the cost and expense thereof shall be levied upon the property so filled, drained, or graded, and collected as other special taxes.

2337. In each city of the metropolitan class there shall be a board of health, to consist of the mayor, who shall be chairman; the commissioner of health, who shall be secretary, and who shall be the city physician of said city; the chief of police, sanitary commissioners, and two members of the city council, who are chairmen of committees relating to streets and alleys and sewers respectively; a majority of said board shall constitute a quorum. Said commissioner of health shall be appointed by the mayor, subject to the approval of a majority of the council, shall hold office for a term of two years from date of appointment unless sooner removed or retired, shall have the qualifications of a physician under laws of the state, and receive compensation at the rate of two thousand dollars ($2,000) per annum, payable monthly. He shall execute and enforce all laws of the state and ordinances of the city, relating to matters of health and sanitation, and all rules and regulations of the board of health concerning matters within their jurisdiction and control. He shall make reports to the board of health as by them directed, of his acts, doings and proceedings as such commissioner, and receive and execute the orders, directions, and instructions of said board. The sanitary commissioner, under the direction of the board of health, shall have charge, control, and supervision of all sanitary and health affairs of such city, including the removal of dead animals, the sanitary condition of streets, alleys and vacant grounds; of stock-yards, wells, cisterns, privies, water-closets, cess-pools, and stables; of houses, tenements, manufactories, and all public and private buildings of every sort, and of any and all buildings and places not specified where filth, nuisances, or offensive matter is kept, or is liable to, or does accumulate; the board of health shall have control and supervision of meats, food, drinks, and the inspection, condemnation, use, sale, and disposition thereof; and shall have power to define, declare, regulate, suppress, and prevent the occurrence of nuisances; said board shall also have control of all contagious or infectious diseases, and the care, treatment, regulation, and prevention thereof; of all hospitals, dispensaries, and places for the treatment of the sick, and of matters relating to births and deaths, and records thereof in said city; also of all cemeteries or places for the burial of the dead. The jurisdiction of said board of health shall extend over such city, and over all grounds and property within three miles of the limits thereof. Said commissioner of health shall have power to enter upon and inspect any and all premises for the detention, correction, or extermination of nuisances, contagious, or infectious diseases, or the improvement of the sanitary condition of said premises. Inspectors of meats, milk, food, and of any and all other matters and things relating to the sanitary condition of such city, shall be under the control and direction of said board of health. The board of health, when in session, shall make rules and regulations for the conduct of its affairs and of the action of the said commissioner of health, and for the efficient regulation, control, direction, and improvement of the health and sanitary affairs of such city embraced or coming within the jurisdiction, direction, or control of said board of health, coupled with penalties for the violation of the same. Said last named rules and regulations shall be presented to the city council, and when approved and enacted by said council, shall have the force and effect of ordinances; and offenders against the same shall be prosecuted in the police court of said city and punished as are offenders against other ordinances of said city. Said board of health shall, as from time to time required by the city council, assume control and direction of the garbage, plumbing inspection, pound master, and other similar matters relating to the health and sanitary condition of such city, and in the same manner hereinbefore provided, make rules and regulations for the government, control, and effectiveness of the same, or may continue to control and direct the same under existing ordinances as may be by said city council directed. Said board of health may provide such office and employ such clerks, inspectors, assistants and deputies as funds provided by the city council may permit, and may make rules and regulations for the government and control of such employees, and define the duties, powers, authority, and compensation of the same. In case of the absence, disability, or inability to act of said commissioner of health, the mayor may, and he is hereby authorized and empowered to designate and appoint some other member of said board or employee thereof, to temporarily perform the duties of said commissioner, and such appointee shall have and exercise the same powers and authority as said commissioner, during the period for which appointed. The chief of police shall co-operate with said board in the enforcement of all ordinances of the city relating to matters within the jurisdiction of said board, and as otherwise directed by the mayor and board of fire and police commissioners. To provide funds for the conduct of the affairs of said department of health, the city council of said city shall, upon the taking effect of this act and thereafter annually, levy a **tax** not exceeding one-eighth mill on the dollar valuation, upon all taxable property in said city subject to taxation, which tax shall be known as the health fund, and shall be enforced and collected as are other general taxes.

Amended 1889, p. 92; 1891, p. 77.

2338. The mayor and council shall have power to provide for the **prevention** of **cruelty** to children or animals.

2339. The mayor and council shall have power to regulate, **license,** or prohibit the running at large of **dogs,** and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

2340. The mayor and council shall have power to prohibit or regulate the running at large, or the herding or driving of **domestic amimals,** such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits, and provide for the **impounding** of all animals running at large, herded or driven, contrary to such prohibition, and also for the forfeiture and sale of animals impounded to pay the expenses of taking up, caring for, and selling the same, including cost of advertising and fees of officers.

2341. The mayor and council shall have power to provide for the **inspection of** steam **boilers,** pipe fittings, and plumbing, and to appoint inspectors, except as herein specially provided, and to declare their powers and duties.

Amended 1889, p. 93.

2342. The mayor and council shall have power to prescribe **fire limits** and regulate the erection of all buildings and other structures within the corporate limits, and provide for the removal of any building or structure, or addition thereto, erected contrary to such regulations, also provide for the removal of dangerous buildings and provide that wooden buildings shall not be erected, or placed, or repaired in the fire limits without permission, and to direct that all and any buildings within such fire limits, when the same shall have been damaged by fire, decay, or otherwise to the extent of fifty per cent of the value of a similar new building above the foundation, shall be torn down or removed, and to prescribe the manner of ascertaining such damage and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or such cost may be collected from the owner of any such building or structure, and be enforced by civil action in any court of competent jurisdiction.

Amended 1889, p. 93.

2343. The mayor and council shall have power to regulate the construction, use, and maintenance of **party walls,** and to prescribe and regulate the thickness, strength, and manner of constructing, stone, brick, wood, or other **buildings,** the size and shape of brick and other material placed therein, and to prescribe and regulate the construction and arrangement of **fire escapes,** and the placing of iron or metallic shutters and doors therein and thereon, and to provide for the inspection of elevators, and for the protection of elevator and hoistway openings to avoid accident; to prescribe, regulate, and provide for the inspection of all **plumbing,** pipe fitting,* or sewer connectings in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passage-ways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stove pipes, ovens, boilers, and heating appliances, used in or about any buildings or manufactory, and to cause same to be removed or placed in safe condition when same are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places, and to cause all buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, and imperfectly burned brick or other unsuitable building material within the city limits, and providing for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults; and to regulate partition fences.

Amended 1889, p. 94; 1891, p. 80.

2344. The mayor and council shall have power to **regulate** the **transportation** of articles **through** the **streets**, and to prevent injuries to the streets from overloaded vehicles, and to prescribe the width of tires for wagons used on paved streets.

2345. The mayor and council shall have power to **prevent** or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other **amusement** or practice having a tendency to annoy persons passing **in** the **street** or on the sidewalks, or to frighten teams or horses.

2346. The mayor and council shall have power to provide for **keeping sidewalks clean** and free from obstructions and accumulations, and may provide for the assessment and collection of taxes on real estate, and for the sale and conveyance thereof, to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided.

2347. The mayor and council shall have power to **regulate** the **weighing** and measuring of hay, wood, and other articles exposed for sale, and of all coal sold or delivered within the city, and to provide for and regulate the **inspection** and sale **of meats,** flour, poultry, fish, milk, vegtables, and all other provisions or articles of food exposed or offered for sale in the city, and to prescribe the weight and quality of bread exposed or offered for sale in the loaf.

2348. The mayor and council shall have power to regulate or prohibit the transportation and keeping of **gunpowder, oils,** and other combustible and explosive articles.

2349. The mayor and city council shall have power to **regulate,** license, or prohibit the **sale** of domestic **animals,** or of **goods,** wares, and merchandise at public auction, on the streets, alleys, highways, or any public grounds within the city.

2350. The mayor and council shall have power to **prohibit** the establishment of additional **cemeteries** within the limits of the city, and to regulate the **registration** of **births** and **deaths,** to direct the keeping and returning of bills of mortality, and impose penalties on physicians, sextons, and others for any default in the premises.

2351. The mayor and council shall have power to **regulate** levees, **depots,** depot grounds, and places for storing freights and goods, and to provide for and regulate the **laying** of **tracks** and the passage of steam, cable, horse, or other railways through the streets, alleys, and public grounds of the city.

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*So in original.

2352. The mayor and council shall have power to **regulate** the crossings of **railway** tracks, to regulate the running of railway engines, cars, and trucks within the limits of the city, and to make other and further rules and restrictions to prevent accidents at **crossings** and on the tracks of railroads, and to prevent fires from engines; also to regulate and prescribe the time and manner of running street cars within the city, and to require the heating and cleaning of such cars, and to fix and determine the fare to be charged.

2353. The mayor and council have power to require the **lighting** of any railway within the city, the cars of which are propelled by steam, in such manner as they shall prescribe, and may fix and determine the number, size, and style of the lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lamp posts, and in case the company owning or operating such railways shall fail to comply with such requirement, the council may cause the same to be done, and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city, and may be collected in the same manner as taxes for general purposes.

2354. The mayor and council shall have power to require any railroad company or companies, owning or operating any railroad track or tracks upon or across any public street or streets of the city, to erect, construct, reconstruct, complete, and keep in repair any **viaduct** or viaducts, upon or along such street or streets, and over or under such track or tracks, including the approaches of such viaduct or viaducts as may be deemed and declared by the mayor and council necessary for the safety and protection of the public; *Provided*, That the approaches to any such viaduct, which any railroad company or companies may be required to construct, reconstruct, and keep in repair, shall not exceed, for each viaduct, a total distance of eight hundred feet. Whenever any such viaduct shall be deemed and declared by ordinance necessary for the safety and protection of the public, the mayor and council shall provide for appraising, assessing, and determining the damages, if any, which may be caused to any property by reason of the construction of such viaduct and its approaches. The proceedings for such purpose shall be the same as provided herein for the purpose of determining damages to property owners by reason of the change of grade of a street, and such damages shall be paid by the city, and may be assessed by the city council against property benefited, and the cost of approaches beyond said distance of eight hundred feet may also be assessed by the council against property benefited by reason of the construction of any such viaduct and its approaches. The width, height, and strength of any such viaduct and the approaches thereto, the material therefor, and the manner of construction thereof shall be as required by the board of public works, as may be approved by the mayor and council. When two or more railroad companies own or operate separate lines of track to be crossed by any such viaduct, the proportion thereof and of the approaches thereto, to be constructed by each, or the cost to be borne by each, shall be determined by the mayor and council. After completion of any such viaduct, any revenue derived therefrom by the crossing thereon of any street railway lines or otherwise, shall constitute a special fund, and shall be applied in making repairs to such viaduct. All ordinary repairs to any such viaduct or to the approaches thereto shall be paid out of such fund or shall be borne by the city.

2355. The mayor and council shall have power to license and regulate the keeping of **toll bridges** within or terminating within the city, for the passage of persons, teams, and property over any river passing wholly or in part within or running by and adjoining the corporate limits of any such city; to fix and determine the rates of toll over any such bridge or over the part thereof within the city, and to authorize the owner or owners of any such bridge to charge and collect the rates of toll so fixed and determined, from all persons passing over or using the same.

2356. The mayor and council shall have power to regulate and provide for the **lighting of streets,** laying down gas pipes, and erection of lamp posts, electric towers, or other apparatus, and to regulate the sale and use of gas and electric lights, and fix and determine the price of gas, the charge of electric light, and the rent of gas meters within the city, and regulate the inspection thereof, and to regulate **telephone** service and the use of telephones within the city and to fix and determine the charges for telephones and telephone service connections, and to prohibit or regulate the erection of telegraph, telephone, or electric wire poles, or other poles for whatsoever purpose desired or used in the public grounds, streets, or alleys, and the placing of wires thereon, and to require the removal from the public grounds, streets, or alleys, of any or all such poles, and to require the removal and placing, under ground of any or all telegraph, telephone, or electric wires.

Amended 1889, p. 95.

2357. The mayor and council shall have power to **appropriate money** and provide for the payment of the debts and expenses of the city.

2358. The mayor and council shall have power to provide for the **planting** and protection of shade or ornamental and useful **trees,** and for the protection of birds, their nests and eggs.

2359. The mayor and council shall have power to erect, designate, establish, maintain, and regulate **hospitals,** or work-houses, houses of correction, **jails,** station houses, and other necessary buildings.

Amended 1889, p. 96.

2360. The mayor and council shall have power to provide for, regulate, and require the **numbering** or renumbering **of houses** along public streets or avenues; to care for and control, to **name** and rename **streets,** avenues, and parks, and squares within the city; to provide for the opening, vacating, widening, and narrowing of streets, avenues, and alleys within the city, under such restrictions and regulations as may be provided by law; *Provided,* That no street or avenue shall be narrowed to a width of less than sixty-six feet, except on petition of two-thirds of the owners of the lots and real estate along that portion of the street or avenue narrowed.

2361. The mayor and council shall have power to regulate and prevent the use of streets, sidewalks, and public grounds for signs, **sign posts,** awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition, or carrying, or conveying of banners, placards, **advertisements,** or the distribution or posting of advertisements, or handbills in the streets or public grounds, or upon the sidewalks.

2362. The mayor and council shall have power to provide for the **inspection** of **weights** and **measures,** and prohibit the use of any imperfect weights or measures or weighing apparatus.

2363. The mayor and council shall have power to establish and maintain **public libraries,** reading rooms, art galleries, and museums, and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, and works of art and objects of natural or scientific curiosity and instruction therefor, and to receive donations and bequests of money or property for the same in trust or otherwise. They may also pass necessary by-laws and regulations for the protection and government of the same.

Amended 1889, p. 96.

2364. The mayor and council shall have power to lay off the city, or parts thereof, into suitable **districts for** the purpose of establishing a system of **sewerage** and drainage; to provide such system and regulate the construction and repairs and use of sewers and drains, and of all proper house construction and branches, and provide penalties for any obstruction of or injury to any sewer or part thereof, and to require and compel sewer connections to be made.

See **11,** 40 (7 N. W., 739).

2365. The mayor and council shall have power to erect, construct, and maintain **water-works,** either within or without the corporate limits of the city, and to make all needful rules and regulations concerning the use of the water supplied by such water-works, and to do all acts necessary for the construction, completion, management, and control of the same, including the appropriation of private property for the public use in the construction and operation of such water-works, compensation for such appropriation to be made as is provided by this act. And the mayor and council of each city created or governed by this act shall have power to construct and maintain water-works on such terms and under such regulations as may be agreed on, or to provide by contract for the construction and maintenance or leasing of water-works, or any main or line thereof, or settling basins therefor.

2366. The mayor and council shall have power to erect and establish **market houses,** and make market places, and to provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city, and they may locate such market houses and market places, and buildings aforesaid, on any streets, alleys, or public grounds, or on any land purchased for such purpose; to provide for the safety and protection of private property where damages are likely to occur by the action of the elements, or through the carelessness and negligence of any servant or officer of the city; and to **establish,** alter, and change the **channels of streams** and water-courses within the city, and bridge the same; *Provided,* That any such improvement costing in the aggregate a sum greater than twenty thousand dollars, shall not be authorized until the ordinance providing therefor shall be first submitted to, and ratified by, a majority of the legal voters of such city voting thereon.

2367. **[Census.]**—The mayor and council shall have power to provide for and cause to be taken any enumeration of the inhabitants of the city.

2368. The mayor and council shall have power to **appropriate private property** for the use of the city for streets, alleys, avenues, sewers, public squares, market places, gas-works, or water-works, including mains, pipe lines, and settling basins therefor, the right and power to appropriate private property for sewers, boulevards, and water-works to extend to a distance of ten miles from the corporate limits of the city. All cities of the metropolitan class and all other corporations exercising the right of eminent domain within the corporation limits of such cities, upon condemning private property under such authority, shall cause to be recorded an accurate plat and a clear, definite description of the property so taken in the office of register of deeds of the county within which such city is located, within thirty days after the other legal steps for the acquisition of such title shall have been taken.

Amended 1889, p. 97.

2369. The mayor and council shall have the power to **tax,** license, and **regulate** pawnbrokers, auctioneers, employment agencies, commission merchants, brokers, insurance officers, insurance agents, surveyors, engineers, architects, house-movers, runners, hawkers, peddlers, telegraph, telephone, or express interest or business, coal dealers, and also such kind of **business** or **vocation** as the public good may require; and the mayor and council shall also have the power to tax, license, and regulate sales of bankrupt stocks of goods, and the selling or contracting for sale of any goods, wares, or merchandise by sample, when such goods, wares, or merchandise are thereafter to be sent or delivered to the purchaser. The mayor and council shall also have power to levy and collect a license tax on shows, caravans, circuses, and exhibitions for pay; billiard tables, ball and ten-pin alleys, without regard to the number of pins used, hacks, drays, or other vehicles used for pay, within the city, and may prescribe the compensation for the use of such hacks, drays, and other vehicles.

Amended 1889, p. 148; 1891, p. 128.

2370. The mayor and council are hereby authorized and empowered to **issue bonds** of the city with interest coupons annexed thereto in such amounts and for such lengths of time as they may deem proper, the rate of interest not to exceed six per cent per annum, for the construction and maintenance of sewers or in the renewal of outstanding bonds of said city bearing a high rate of interest, or for the purpose of funding, taking up, and making payment of the floating indebtedness and liabilities of the city, and for the construction of a city hall or other needful buildings for the use of the city, or for the appropriation or purchase of gas-works, water-works, or land for public parks. All such bonds shall express upon their face the purpose for which they are issued; *Provided*, The bonded indebtedness of the city, exclusive of the district paving bonds, and curbing and guttering bonds heretofore issued, district bonds issued for the erection of a city hall, grading bonds hereafter issued, and bonds issued for park purposes, shall not at any time exceed in the aggregate twelve and one-half (12½) per centum of the assessed valuation of the taxable property in the city; *Provided further*, No bond shall be issued except such renewal bonds, and bonds for paving or appropriation of gas-works or water-works, or land for public parks or boulevards, or for curbing or guttering purposes, or for the erection of a city hall, in excess of two hundred thousand ($200,000) dollars in any one year, nor until the legal electors of said city shall have authorized the same by a vote of two-thirds of all the electors voting on such proposition at a general, annual, or special election of said city, called after twenty days' public notice, stating distinctly the amount and the purpose for which they are to be issued; which bonds or the proceeds from the sale thereof shall not be diverted from the purpose for which they were issued, and shall not be disposed of at less than par.

Amended 1889, p. 97; 1891, p. 81.

2371. The **sinking fund** to redeem at maturity the bonded indebtedness of the city may be used to purchase such bonds, before maturity, on such terms, and in such manner as may be prescribed by ordinance; *Provided*, That bond-holders shall be given an opportunity to compete for the sale of bonds held by them, and the bonds that can be purchased upon the most favorable terms shall be preferred.

2372. The mayor and council shall have power to create a board to be known as **commissioners of adjustment**, to be composed of the city engineer and two resident freeholders, who shall, as soon as practicable, cause to be surveyed in sections or districts all lots, blocks, streets, alleys, and public grounds within any city of the metropolitan class, not surveyed and platted with fixed monuments and recorded; and such additions within the incorporate limits of such city where discrepancies or uncertainties may exist as to the lines of the streets, alleys, lots, or blocks in such addition; and to make maps of their surveys, in sections or districts, showing thereon the width of every street and alley, and the extent of all squares, parks, and public grounds within such section or district; and to fix monuments as may be necessary for the preservation of all lines so established. Said commissioners shall also constitute a board of appraisers, who shall appraise all damages sustained by the adoption of such lines and plats, and shall submit a list of such damages to the mayor and city council for their approval or modification, and who shall tender the amount of damages so approved to the party or parties entitled to the same, before the final passage of any ordinance affecting the same, and attach a record of such action to the documents filed with the county clerk, and any person feeling aggrieved by the award of damages may appeal therefrom to the district court within sixty days after approval or modification by the mayor and council. Said commissioners, having completed their survey, maps, and profiles of any specific district, shall deliver the same, with a written report, to the clerk of the city, who thereupon shall publish a notice for three weeks, in the official paper of the city, stating that such report has been made, and that the same, with maps, is open to public inspection in the office of the city engineer, where the same shall be kept during the publication of said notice. Any property owner or other person interested, who shall be dissatisfied with such survey and plats thereof, may, at any time within three months after publication of said notice, file with the clerk of the city objections thereto, in writing, stating specifically the grounds and reasons of such objections. After the expiration of such time, in case such objections are so filed, said clerk shall cause said maps, with the written objections thereto, to be returned to said commissioners, who may, after duly considering such objections, modify their reports, if they deem proper. In case no written objections are so filed, or being filed, and having been considered by said commissioners, the said maps and reports shall be submitted to the common council, who shall fix a time and publish a notice thereof in the official paper, and they may hear at such time any objections to said maps and reports, and change the same as they may deem just and proper; and when the same shall have been made satisfactory to the council, such reports as modified shall be adopted by ordinance in due form, and the council shall cause a copy thereof, with such maps and reports, to be filed with the county clerk of the county in which said city is located, and he shall record the same as instruments of real estate are required to be recorded; and afterwards said maps and surveys shall stand as the legal and valid plat of said city, or part thereof, to determine all lines of lots, blocks, streets, alleys, and public grounds, in the parts of said city so surveyed. The report of said board herein referred to shall be construed to mean a report of a majority of said commissioners. The said commissioners shall be appointed by the mayor, subject to the approval of the city council, and in cases of a vacancy happening in said board, by death, resignation, or otherwise, the vacancy shall be filled in like manner. And the mayor and council may by ordinance provide for the preservation and protection of said monuments, and the punishment of any person or persons removing the same or interfering therewith.

2373. The mayor and council shall have **power** to **open,** extend, widen, narrow, grade, curb and gutter, park, beautify, or otherwise improve and keep in good repair, or cause the same to be done in any manner they may deem proper, **any street,** avenue, or alley within the limits of the city and may grade partially or to the established grade, or park or otherwise improve any width or part of any such street, avenue, or alley, and may also construct and repair, or cause and compel the construction and repair of sidewalks in such city, of such material, and in such manner as they may deem proper and necessary; and to defray the cost and expense of improvements, or any of them, the mayor and council of such city shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to or abutting upon the street, avenue, alley, or sidewalk thus in whole or in part opened, widened, curbed, and guttered, graded, parked, extended, constructed, or otherwise improved or repaired, or which may be especially benefited by any of said improvements; *Provided*, That the above provisions shall not apply to ordinary repairs of streets or alleys and one-half of the expense of bringing streets, avenues, alleys, or parts thereof, to the established grade shall be paid out of the general fund of the city, except as otherwise hereinafter provided; *Provided*, That where any street is to be graded under the provisions provided by this section, but not to the established grade, it shall be done only after the owners representing a majority of the front feet of the property abutting on the part of such street to be so partially graded shall have petitioned the city council for such work to be done; *Provided further*, That whenever the owners of the lots abutting upon any street or alley, or part thereof, within said city representing three-fifths ($\frac{3}{5}$) of the feet front abutting upon such part of street or alley desired to be graded shall petition the council to grade such street or alley or part thereof, without charge to the city, the mayor or council may order the grading done, and assess the cost thereof against the property abutting upon such street or alley or such part thereof so graded. The total cost of such grading shall be levied and collected in a single payment upon the completion of such work; or upon petition of not less than three-fifths ($\frac{3}{5}$) of the feet front along the street or alley so graded, the cost may be made payable in ten (10) equal installments extending over a period of nine years, in the same manner, at the same rate, and subject to the same conditions as are payments for paving, curbing, guttering, and like improvements hereinafter specified. In case of such installment payment the mayor and council shall by ordinance create districts embracing the property represented by such petition, and abutting on which said grading was done, to be known as grading districts and numbered consecutively. And for the purpose of paying the cost of such grading within such district—pending payment of the installments herein provided—the mayor and council are hereby authorized and empowered by ordinance to issue bonds to be called Grading Bonds No. —, to run for the same time, to bear the same rate of interest, and be subject to the same and all conditions of sale, use, protection, charge, lien, and liquidation for grading purposes as is hereinafter provided for "District Street Improvement Bonds" issued to cover the cost of paving, curbing, and like improvements; *Provided further*, That in case the grade of any street or part of street used by the public shall not have been established, or in case any street or part thereof shall not have been worked to grade, then, and in such case, the owner or owners of any lot, lots, or lands abutting on such streets or portion of streets as aforesaid shall only be required to construct or repair the sidewalks along such street or part thereof with plank, as the council may direct in such case; *And provided further*, That in case the owner or owners of any such lot, lots, or land abutting on such street or portion thereof shall fail to construct or repair such sidewalks in the manner and within the time as directed and required by the council in each case after having received due notice to do so, they shall be liable for all damages or injuries occasioned by reason of the defective or dangerous condition of any such sidewalk; *And provided further*, That curbing and guttering shall not be ordered or required to be laid on any street, avenue, or alley not ordered to be paved except on the petition of a majority of the owners of the property abutting along the line of that portion of the street, avenue, or alley to be curbed and guttered. The mayor and council shall have power to improve any street or alley, or part thereof in the city, and for that purpose to create suitable street improvement districts, which shall be consecutively numbered. Such work to be done under contract and under the superintendent* of the board of public works of the city. Such improvements shall consist of paving, repaving, or macadamizing, as well as curbing, if such are necessary on any street or alley ordered improved by the mayor and council; *Provided*, That before any improving shall be done upon any street, alley, or avenue in which there are gas or water mains laid, or to be laid, or sewers constructed, or to be constructed, the mayor and city council shall cause all gas, water, and sewer connections to be made as hereafter provided. Whenever the owner of the lots or lands abutting upon the streets or alleys within the street improvement district, representing a majority of the feet front thereon, shall petition the council to improve such streets or alleys, it shall be the duty of the mayor and council to improve the same, and in all cases of paving, repaving, or macadamizing there shall be used such material as such majority of the owners shall determine upon; *Provided*, The council shall be notified in writing by said owners of such determination, within thirty days next after the passage and approval of the ordinance ordering such improving. In case such owners fail to designate the material the[y] desire to use in such improving, in manner and within the time above provided, the mayor and council shall determine upon the material to be used. The cost of improving the streets and alleys within any improvement district, except the paving of intersections of streets and space opposite alleys within such district, shall be assessed upon the lots and lands abutting upon the streets and alleys in such district, in proportion to the feet front so abutting upon such streets and alleys. The assessments of special taxes for improvement purposes herein provided for shall be made as follows: The total costs of the improvements shall be levied at one time upon the property and become delinquent as herein provided: One-tenth ($\frac{1}{10}$) of the total amount shall be delinquent in fifty days after such levy, one-tenth ($\frac{1}{10}$) in one year, one-tenth ($\frac{1}{10}$) in two years, one-tenth ($\frac{1}{10}$) in three years, one-tenth ($\frac{1}{10}$) in four years, one-tenth ($\frac{1}{10}$) in five years, one-tenth ($\frac{1}{10}$) in six years, one-tenth ($\frac{1}{10}$) in seven years, one-tenth ($\frac{1}{10}$) in eight years, one-tenth ($\frac{1}{10}$) in nine years; each of said installments, except the first, shall draw interest at the rate of six per cent per annum from the time of levy aforesaid until the same shall become delinquent, and after the same shall become delinquent, interest at the rate of one (1) per cent per month, payable in advance, shall be paid thereon as in the case of other special taxes. Such taxes shall be collected and enforced as in other cases of special taxes. In all cases of special taxes the city treasurer shall have the right and authority, after the same or any part thereof shall have become delinquent, to seize personal property of the party who owns the real estate upon which such taxes have been levied, and to sell such personal property for the satisfaction of such taxes, upon the same advertisement and in the same manner that constables are now authorized by law to seize and sell personal property upon execution; but failure to seize and sell personal property shall in nowise affect the lien of the tax, or any proceedings authorized by law to enforce the tax. In cases of omission, errors, or mistake in making such assessment or levy in respect to the total cost of the improvements or deficiencies or otherwise, it shall be competent for the council to make a supplemental assessment and levy to supply such deficiencies and omission, errors or mistakes. The cost of paving, macadamizing, or repaving the intersections of streets and space opposite alleys in any paving district shall be paid by the city as hereinafter provided; but nothing herein contained shall be construed to exempt any street railway company from keeping every portion of every street and alley used by it, upon or across which its track shall be constructed at or near the grade of such streets, in good and safe condition for public travel and shall keep the same planked, paved, macadamized, or otherwise in such condition for public travel as the city council of such city may from time to time direct, keeping the plank, pavement, or other surface of the street or alley level with the top of the rails of the track of such street railway. For the purpose of paying the cost of improving the streets and alleys in any improvement district, exclusive of the intersections of streets and space opposite alleys therein, except as hereinafter provided, the mayor and council shall have power, and may by ordinance cause to be issued bonds of the city, to be called "District Street Improvement Bonds of District No. ——," payable in not exceeding ten (10) years from date, and to bear interest, payable annually, not exceeding the rate of six (6) per cent per annum, with interest coupons attached, and in such case shall also provide that said special taxes and assessment shall constitute a sinking fund for the payment of said bonds and interest; *Provided*, That the entire cost of improving any such streets or alleys, properly chargeable to any lots or lands within any such paving district according to the front feet thereof, may be paid by the owner of such lots or lands within fifty (50) days from the levy of such special taxes, and thereupon such lots or lands shall be exempt from any lien or charge therefor; *And provided further*, That whenever the property owners representing three-fifths of the feet frontage of lots or lands upon any street or alley or part thereof shall petition the city council to create an improvment district, including street and alley intersections, if any, and to have the same improved without cost to the city, then, and in that case, the council shall have power to create such district and cause a contract to be made for such improvement, and to assess and levy a special tax upon all lots or lands within such improvement district so created, to pay for the said improvement, within the same, including the intersection of streets and alleys, if any. Whenever the mayor and council deem it expedient, they shall have power, for the purpose of paying the cost of paving, repaving, or macadamizing the intersection of streets and spaces opposite alleys in the city, [to] issue bonds of the city to run not more than twenty years, and to bear interest payable semi-annually at a rate of not exceeding six per cent per annum, with coupons attached, to be called "Paving Bonds," and which shall not be sold for less than par, and the proceeds of which shall be used for no other purpose than paying the cost of paving, repaving, or macadamizing the intersections of streets and alleys in the city; *Provided*, That the aggregate amount of such bonds issued in any one year shall not exceed the sum of one hundred thousand dollars ($100,000); *And provided further*, That no such bonds shall be issued until the question of issuing the same had been submitted to the electors of the city at a general or special election therein, and authorized by a vote of two-thirds of the electors voting on such question at such election. If in any city of the metropolitan class there shall be any real estate not subject to assessment of special taxes for paving purposes the mayor and council shall have the power to pave in front of the same and to pay the cost thereof that would otherwise be chargeable on such real estate, in the same manner as herein provided for the paving of intersection of streets and paying therefor. The word "lot," as in this act used, shall be taken to mean a lot as described and designated upon the recorded plat of any such city, and in case there is no recorded plat of any such city, it shall mean a lot as described and designated upon any generally recognized map of such city. The word "lands" shall mean any unsubdivided real estate. The word "street" shall be deemed to include boulevard; *Provided*, That if the lots and real estate abutting upon that part of the street ordered improved, as shown upon any such recorded plat or map, are not of uniform depth, or if for any other reason it shall appear just and proper to the mayor and council, the mayor and council are authorized and empowered to determine and establish the depth to which the real estate shall be charged and assessed with the cost of the improvement, which shall be determined and established according to the benefits accruing to the property by reason of the improvement. Real estate may be so charged and assessed to a greater depth than the depth of the lots as shown upon any such plat or map. The mayor and council may, in their discretion, include all the real estate to be charged and assessed with the cost of such improvement in the improvement districts in this section hereinbefore provided for, but are not required so to do; and the mayor and council may, in their discretion, in determining whether the requisite majority of the owners who are hereinbefore authorized to petition for improving, and to determine the kind of material to be used therefor, have joined in such petition and determination, consider and take into account all of the owners of all real estate to be charged and assessed with the cost of improvement, or only such as own real estate that in fact abuts upon the part of the street proposed to be improved. In cases where paving has already been done in whole or in part, or contracts have been let therefor under existing laws, in case the lots and real estate abutting upon that part of the street ordered paved, as shown upon any such plat or map, are not of uniform depth, as well as in all cases where, in the discretion of the mayor and council, it is just and proper so to do, the mayor and council shall have the right and authority to fix and determine the depth to which real estate shall be charged and assessed with the cost of such improvement, without regard to the line of such lots, the same to be fixed and determined upon the basis of benefits accruing to the real estate by reason of such improvement. Where such improvements have already commenced or contracts therefor have been entered into under any ordinance passed upon a petition of property owners, as well as the cases where the material to be used for such improvements has been ordered in accordance with the determination of property owners, such petition and determination shall be deemed and taken as sufficient compliance with the law if the requisite number of owners of real estate which in fact abuts upon the part of the street ordered to be so improved have joined therein. The provisions of this section in regard to the depth to which real estate may be charged and assessed shall apply to all special taxes that may be levied, except for sidewalk in proportion to the front feet in cities of the metropolitan class. No court shall entertain any complaint that the party was authorized to make and did not make to the city council sitting as a board of equalization, nor any complaint not specified in said notice fully enough to advise the city of the exact nature thereof; nor any complaint that does not go to the groundwork, equity, and justice of the tax. The burden of proof to show such tax or part thereof invalid, inequitable, or unjust shall rest upon the party who brings such suit; *Provided*, Whenever the mayor and council shall enter into or shall have entered into a contract with any paving contractor to keep the pavement in any paving or street improvement district in repair for a term of years for a specified price per year, said mayor and council shall have the power and it shall be their duty to levy annually a special tax and assessment upon all the property in the paving or street improvement district to cover the cost of said repairs. Such special tax shall be levied and collected as in other cases of special taxes.

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*So in original.

Amended 1891, p. 82.

2374.* The mayor and council shall have **power to levy** and collect **taxes** for general purposes not exceeding fourteen (14) mills on the dollar valuation in one year, and on all the real estate and personal property within the corporate limits of the city taxable according to the law of this state, including all interests or business so taxable, and shall have power to levy on† all horse, cable, steam, electric or other railway companies now existing or hereafter created in cities of the metropolitan class already incorporated or hereafter organized shall be required to pave or repave at their own cost all the space between its different rails and tracks, and also a space outside of the outside rails of the outside tracks of twelve (12) inches, and the tracks herein referred to shall include not only the main tracks, but also side tracks, crossings, and turnouts used by such companies, and when two or more companies occupy the same street or alley with separate tracks, then each company shall be responsible for the proportion of the surface of the street or alley occupied by all the parallel tracks as herein required. Such paving or repaving by such railway companies shall be done at the same time and shall be of the same material and character as the paving or repaving of the streets or alleys upon which said railway track or tracks is* located, unless other material be specially ordered by the board of public works; *Provided*, That in lieu of the above, and until January 1, 1893, such street railway companies shall only be required to pave between their rails. Such railway companies shall be required to keep that portion of the street which they are herein required to pave or repave in good and proper repair, using for said purpose the same material as the street upon which the track or tracks are laid at the point of repair, or such other material as the board of public works may require and order; and as streets are herefter paved or repaved, street railway companies shall be required to lay, in the best approved manner, a flat rail, to be approved by the board of public works. The track of all railway companies, when located upon the streets or avenues of the city, shall be kept in repair and safe in all respects for the use of the traveling public, and said companies shall be liable for all damages resulting by reason of neglect to keep such tracks in repair, or for obstructing the streets or avenues of such city. For injuries to persons or property arising from the failure of such company to keep their tracks in proper repair and free from obstructions, such companies shall be liable, and the city shall be exempt from liability. The word "companies," as used in this act, shall be taken to mean and include any persons, companies, corporations, or associations owning any street or other railway in any such city.

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* While the title of the act of 1891 does not mention sec. 70, yet sec. 9 of said act expressly amends this section and it is here inserted. The amendment consists in adding all before † and changing 1891 to 1893.

Amended 1889, p. 99; 1891, p. 93.

2375. In the event or **refusal** of such companies **to pave**, repave, **or repair** as required in the foregoing sections, when so directed by the mayor and council, upon the paving or repaving of any street upon which their track is laid, the mayor and council shall have power to pave, repave, or repair the same, and the cost and expense of such paving, repaving, or repairing may be collected by levy and sale of any real real or personal property of said street railway company, the same as special taxes are collected. Special **taxes** for the purpose of paying the cost of any such paving or repaving, macadamizing, or repairing of any such street railway, may be levied upon the track, including the ties, iron, road-bed, and right of way, side tracks, and appurtenances, including buildings and real estate belonging to any such company or person, and used for the purpose of such street railway business all as one property; or upon such parts of such tracks, appurtenances, and property as may be within the district paved, repaved, macadamized, or repaired, or any part thereof, and shall be a lien upon the property upon which levied from the time of the levy until satisfied. No mortgage, conveyance, pledge, transfer, or incumbrance of any such property of any such company or person, or any of its rolling stock or personal property, created or suffered by a company or party, after the time when any street or part thereof, upon which any street railway shall have been laid, shall have been ordered paved, repaved, macadamized, or repaired, shall be made or suffered except subject to the actual or prospective lien of such special taxes, whether actually levied or not, if such levy be in contemplation. The city treasurer shall have the power and authority to seize any personal property belonging to any such person or company for the satisfaction of any such special taxes when delinquent, and to sell the same upon advertisement, and in the same manner as constables are now authorized to sell personal property upon execution at law; but failure so to do shall in nowise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track, or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate upon which such special taxes may be levied may be sold. It shall also be competent for any such city to bring a civil action against any party owning or operating any such street railway, and liable to pay said taxes, to recover the amount thereof, or any part thereof delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment, and have the execution therefor, and no property, real or personal, shall be exempt from any such execution; *Provided*, That real estate shall not be levied upon by execution except by execution out of the district court on a judgment therein, or transcript of judgment filed therein, as now provided by law. No property seized by the city treasurer as hereinbefore provided, or upon any such execution, shall be taken from the officers holding the same on any order of replevin. No defense shall be allowed in any such civil action except such as goes to the groundwork, equity, and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special tax shall be shown to be invalid, unjust, and inequitable, judgment shall be rendered for such amount as is just and equitable, and costs shall follow the judgment. It shall be competent for the mayor and council, upon the written application of any company, association, corporation, or person owning any such street railway to provide that such special taxes shall become deliquent and be payable in installments, as in case of taxes levied upon abutting real estate as hereinafter provided; but such application shall be taken and deemed a waiver of any and all objections to such taxes and to the validity thereof. Such application shall be made at or before the final levy of such taxes. The provision of this act in regard to the levy, collection, and enforcement of special taxes to pay the cost of paving, repaving, macadamizing, or repairing between the rails of street railways shall apply to such special taxes hereinafter levied, whether for such improvements heretofore ordered and contracted for or to be hereafter ordered and made.

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*So in original.

Amended 1889, p. 113.

2376. The mayor and council shall have power, in any paving district, and it shall be their duty before the work of paving or repaving is done therein, to require **water, gas, and sewer connections** to be made under such regulations and at such distances, as may be prescribed by ordinance, from the street mains to the line of property abutting upon the street ordered paved or repaved, and shall require that such water pipe connections may be made by any water-works company owning the water pipe main, and that such gas pipe connections may be made by any gas company owning the gas pipe main. And upon neglect or failure of the water or gas companies to do the same, the board of public works may cause the same to be done, and the cost thereof shall be deducted from the indebtedness of the city to such companies, and no bills shall be paid to the said companies by the city until all such expense for pipe laying shall have been liquidated. And the mayor and council shall also have power at any time to assess the cost of any sewer connections upon the property opposite such connections, and to such depth as the council, sitting as a board of equalization, shall deem just and equitable.

Amended 1889, p. 116.

2377. All **special taxes** to cover the cost of any **public improvement** herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate bounding, abutting, or adjacent to such improvement, or within the district created for the purpose of making such improvement, to the extent of the benefits to such lots, parts of lots, lands, and real estate by reason of such improvement, such benefits to be determined by the council sitting as a board of equalization, after publication of notice to property owners as herein provided, and in cases where the council, sitting as a board of equalization, shall find such benefits to be equal and uniform, such assessment may be according to the foot frontage, and may be prorated and scaled back from the line of such improvement according to such rules as the board of equalization shall consider fair and equitable, and all such assessments and findings of benefits shall not be subject to review in any legal or equitable action, except for fraud, gross injustice, or mistake; *Provided,* That when any public improvement shall extend into or through any unsubdivided track or parcel or parcels of land, said taxes shall be levied so as not to be charged against the real estate adjoining such improvement for a greater depth than the average distance through the subdivided real estate to be taxed for said purpose.

Amended 1889, p. 117.

2378. It shall be sufficient, in any case in making a levy or assessment of any tax, to **describe** the **lot** or piece of ground **as** the same is **platted** and recorded, although the same belonged to several persons; but in case any lot or piece of ground belonging to different persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

2379. The **cost** and expense **of** grading, filling, culverting, curbing, guttering, or otherwise **improving,** constructing, or repairing streets, avenues, alleys, and sidewalks, **at** their **intersections,** may be included in the special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the council.

2380. **Special taxes** may be levied as the improvements are completed in front of, or along, or upon any block, or piece of ground, or at the **time** the improvement is entirely completed, or otherwise, according as shall be provided in the ordinance levying the tax.

2381. When any **special tax** is levied it shall be the duty of the city clerk to deliver to the city treasurer a certified copy of the ordinance levying such tax, who shall without delay give at least five days' notice through the official paper of the city, of the time when such tax will become delinquent. To every such certified ordinance the city clerk shall append a warrant in the usual form, requiring the city **treasurer** to **collect** such special tax or taxes by distress and sale of the goods and chattels of the person, persons, or bodies corporate owning [owing] any such special tax or taxes, if the same be not paid before the time fixed for the same to become delinquent.

2382. **Special taxes** may be levied by the mayor and council **for** the purpose of paying the cost of constructing or reconstructing **sewers** or drains within the city; such taxes to be levied on the real estate lying and being within the sewerage district in which such sewerage or drain may be situated, to the extent of the benefits to such property by reason of such improvement, the benefits to such property to be determined by the council, sitting as a board of equalization, after notice to property owners as in other cases of special assessment provided, and in cases where the council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots of real estate within said sewerage district or according to such other rule as the council, sitting as such board of equalization, may adopt for such distribution or adjustment of such cost upon the lots or real estate in such district benefited by such improvement; and all taxes or assessments made for sewerage or drainage purposes shall be collected in such manner as other special assessments, and shall be subject to the same penalty.

Amended 1889, p. 117. Special assessments can only be levied upon property specially benefited, and only to the exent of the benefits. 11, 37 (7 N. W., 739).

2383. The mayor and council shall have power to levy and collect **taxes** for **general purposes**, not exceeding fourteen (14) mills on the dollar valuation in one (1) year, and on all the real estate and personal property within the corporate limits of the city taxable according to the law of this state, including all interests or business so taxable; and shall also have power to levy and collect taxes on all such property for the sole and exclusive purpose of repairing, modifying, reforming, or changing and maintaining curbs and **gutters**, and for cleaning and repairing **pavements** not exceeding three (3) mills on the dollar valuation in any one (1) year, taxes levied for said purposes to be and constitute a special fund therefor; and shall have power to levy and collect on all property, for the sole and exclusive purpose of maintaining and cleaning **sewers**, not to exceed a half (½) mill on the dollar valuation in any one (1) year, taxes levied for such purposes to constitute a special fund therefor; and shall also have power to levy and collect on all such property for the sole and exclusive purpose of maintaining and paying the **police** department of any such city not exceeding five (5) mills on the dollar valuation in any one (1) year, taxes levied for said purpose to constitute a special fund therefor; and shall also have the power to levy and collect on all such property for the sole and exclusive purpose of maintaining and paying the **fire** department of any such city not to exceed five (5) mills on the dollar valuation in any one (1) year, taxes levied for said purpose to constitute a special fund therefor; and shall also have the power to levy and collect on all such property for the sole and exclusive purpose of providing and furnishing **light** for such city not to exceed three (3) mills on the dollar valuation in any one (1) year, taxes levied for such purpose to constitute a special fund therefor. The **valuation** of such property to be taken from the last previous assessment book or books of the assessor, assessing property for and within metropolitan cities, as by him returned and assessed. The city clerk shall annually make a copy of such assessment for the purposes of taxation as herein provided and said assessor shall permit the making of the copy hereby contemplated; *Provided*, That whenever the total valuation of property in said city, for purposes of taxation, shall in any one year exceed the sum of twenty-five millions (25,000,000) of dollars, then and in that case the rate of levy for any and all taxes herein provided shall be reduced and decreased in exact ratio and proportion to the increase in valuation of taxable property over and above the said sum of twenty-five millions (25,000,000); *Provided, also*, That the authorities of any such city shall not in any such year, issue warrants or orders to an amount exceeding ninety (90) per cent of the amount of taxes levied for such year, and the amount actually received from other sources, and said city authorities shall not contract or incur any indebtedness in addition to the amount for which they are authorized to issue warrants or orders or bonds. Upon the completion of such copy of said **assessment roll** the city clerk shall add to such roll all storehouses, warehouses, shops and other buildings, within the right of way, or along, or adjoining, or adjacent to any sidetrack of such railroad, or within the right of way of such telegraph company, used for purpose of rent by said company, or purposes other than the ordinary operations of said company and not appearing upon the county rolls by reason of having been returned to the state board, and assess the same as personal property, and also all lots and lands outside of the right of way, which said right of way shall only include fifty (50) feet of lands or lots abutting on each side of the main tracks of any railroad, and assess the same, as near as may be, to correspond with the assessed value of like property on said county roll for the purpose of taxation for municipal purposes; and such assessment shall be subject to equalization of the city council, the same as other property, when sitting as a board of equalization.

Amended 1889; p. 118; 1891, p. 95.

2384. The mayor and council are hereby required to make provisions for a **sinking fund** to redeem at maturity the bonded indebtedness of the city, and also to provide for the payment of **interest** on its bonds as such interest may mature; and for such purpose the mayor and council thereof shall levy and collect a **tax** not exceeding one per cent in any one year upon all property taxable for general city purposes.

2385. The mayor and city council shall have power to levy and collect **taxes** for the special purpose of paying rents for **water** for fire purposes and for public use, **not** exceeding four and one-half mills on the dollar in any one year, upon all property taxable for city purpose; *Provided*, That when the total **valuation** of property in said city, for purposes of taxation, shall in any one year exceed the sum of twenty-five millions of dollars, then, and in that case, the **rate** of levy for the tax herein provided shall be reduced and decreased in exact ratio and proportion to the increase in valuation of taxable property over and above the said sum of twenty-five millions of dollars.

Amended 1891, p. 97.

2386. All municipal **taxes** and all local or special assessments in such city shall be paid in **cash.**

2387. All municipal **taxes** shall be **collected** from the personal property of the person, persons, or body corporate owning the same, whenever the same is practicable, and whenever personal property cannot be found belonging to any such person, persons, or body corporate, then, and in that case, all such delinquent taxes as may have been levied on any real estate within such city shall be collected by the county treasurer of the county in which such city is situated, by sale of such real estate, the same as in case of delinquent county taxes.

2388. The mayor and council shall have full power and authority to pass any and all **ordinances** not inconsistent with the laws of this state, that they may deem necessary to secure the speedy and thorough collection of all municipal taxes and special assessments.

2389. The city clerk shall complete the **assesment roll** for the city on or before the second Monday in October of each year, unless otherwise ordered by the council, and when such roll is **completed,** the council shall hold a session not less than five days, as a board of **equalization,** giving notice of said sitting for at least six days prior thereto in three daily papers of the city. The mayor and council shall make the **annual levy** at the first regular meeting of the city council in February of each year. And in all cases before any special taxes that may be levied, except for constructing wood sidewalks, shall be finally levied, it shall be the duty of the council to sit as a board of equalization for the purpose of equalizing any such proposed levy of special taxes or assessments and correcting any error therein, giving notice of such sitting in the same manner as above provided in this section, stating in such notice the purpose for which it will sit, and it shall continue such session not less than one day, from nine A. M. to five P. M., and at such session it shall hear all complaints that the owners of property so to be assessed and taxed may make, and it shall be its duty to equalize any such assessment by correcting any errors therein, and thereupon such assessments and special taxes shall be finally made.

Amended 1889, p. 120.

2390. On the first of July next succeeding the levy thereof, all unpaid city **taxes** in cities of the metropolitan class shall be and become **delinquent,** and shall thereafter draw **interest** at the rate of one per cent per month, payable in advance, which interest shall be collected the same as the tax due, and it shall be the duty of the city treasurer to proceed, as soon as practicable after any tax becomes delinquent, to make such delinquent tax out of the personal property of such delinquent, if any such property can be found within such city. **No demand** of taxes shall be **necessary,** but it shall be the duty of every person owing any municipal tax or taxes in such city to attend at the treasurer's office and pay the same.

Amended 1889, p. 121.

2391. As soon as the assessment roll shall have been equalized and the levy made thereon, the city clerk shall immediately make out a **tax list** and duplicate thereof, which shall be as nearly as practicable in the form prescribed by law for the tax list to be furnished county treasurers, and he shall deliver such tax list to the city treasurer on or before the first day of May next after the date of the levy in each year, and he shall make the duplicate thereof in his office. Errors in the names of persons assessed may be corrected by the treasurer and the tax collected from the person intended, and in case the treasurer finds any land has been omitted in the assessment, he shall report the fact to the council, who may assess the same and direct the correction of the list.

Amended 1889, p. 122.

2392. To each **tax** list so delivered, a **warrant** under the hand of the city clerk shall be annexed, to be substantially in the following form, to-wit: "In the name and by the authority of the state of Nebraska: To ———, city treasurer of the city of ———, in said state ———: You are hereby commanded to collect from each of the persons and corporations named in the annexed tax list, and of the owners of the real estate described therein, the taxes set down in such list opposite their respective names, and the several parcels of land described therein; and in case any person or corporation, upon whom any such tax or sum is imposed, or who by law is required to pay the same, shall refuse or neglect to pay the full amount thereof before the first day of July next, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed, as are by law required to pay such tax. Given under my hand and official seal this ——— day of ———, A. D. 18—. ———, city clerk of the city of ———."

2393. Such **warrant** shall fully authorize and empower the city treasurer to levy on any personal property belonging to any such delinquent and collect therefrom any municipal taxes then due from such delinquent, and such warrant shall be full and complete justification to the treasurer in any action brought to recover damages or costs for any act or proceeding by him done, or taken in conformity with the commands thereof.

2394. The **powers**, rights, duties, and proceedings **of** the city **treasurer** in cities of the metropolitan class, and of such deputies as he may appoint, shall in all respects, as far as applicable, and except as herein otherwise provided, be the same in respect to the collection of municipal taxes and assessments as those of [the] county treasurer in like cases with reference to the collection of county taxes. He shall receive a **salary** of six thousand dollars ($6,000) per annum, payable monthly as are other officials, which salary shall be in full compensation for all services performed by him as such treasurer; *Provided*, This section, so far as the same relates to the salary of said treasurer, shall not take effect until the successor of the present incumbent has been duly elected and qualified.

Amended 1891, p. 98.

2395. It shall be the duty of the city treasurer on or before the first Monday in September of each year to make out a complete **delinquent list** of all lots, lands, and parcels of real estate, the taxes and assessments on which for the preceding year remain uncollected at that time, with the amount of such taxes or assessments, together with penalty and interest due from each lot or parcel of real estate set opposite the same; arranging the several lots, lands, or parcels of real estate in such list in the order that they appear on the tax list; stating also in each case the purpose for which the tax or assessment was levied. The county treasurer shall receive such delinquent list; and he shall advertise the real estate therein described for **sale for** such delinquent **taxes** or assessments at the same time he advertises the sale of real estate for delinquent taxes, by adding the amount of such delinquent city taxes and and* assessments to the amount of delinquent state, county, and other taxes, and he shall sell such lots, lands, or parcels of real estate for the purpose of paying all such delinquent taxes and assessments, and shall credit such city for the amount of taxes or assessments so collected, which shall be subject to the order of the treasurer of such city. In the sale of any real estate as above provided for, and in the giving of certificates of sale and tax deeds therefor, the county treasurer shall proceed in the same manner as is or may be provided by law for his proceedings in the sale of real estate for delinquent county taxes, and with like power and authority; and the real estate so sold may be redeemed within the time and upon the same terms and conditions, in every respect, as is or may be provided by law for the redemption of real estate sold for delinquent county taxes; *Provided*, That under this act the county treasurer shall be authorized to collect only by sale of real estate; *And provided further*, It shall be the duty of the city treasurer, upon any taxes being collected by him after the delinquent tax list shall have been delivered to the county treasurer, to forthwith notify the county treasurer of such collection, that the same may be canceled on the delinquent tax list; *Provided further*, That the failure, neglect, or refusal of the city treasurers to make the tax assessed against any real estate by distress and sale of the personal property of the owners thereof, shall not in anywise affect or invalidate the sale of such land for such tax.

Amended 1889, p. 123; 1891, p. 98.

2396. Municipal **taxes** and special assessments upon real estate in any such city are hereby made a **perpetual lien** thereupon from the day on which the same were levied against all persons or bodies corporate, except the United States and this state. Any **person** or body corporate **purchasing** any real estate for any tax or assessment levied by the authorities of any city of the metropolitan class, shall, after the lapse of five years from the time of recording the treasurer's deed therefor, **acquire** and have a complete **title** thereto, and thereafter all persons shall be debarred from commencing or sustaining any action in any court of this state to recover possession of the same.

2397. **Irregularities** in making assessments and returns thereof, in the equalization of assessments, and in the mode and manner of advertising the sale of any property, shall not invalidate or affect the sale thereof, when advertised and sold for delinquent city taxes or special assessments as herein provided; nor shall the sale of any real estate for such taxes or assessments be invalid on account of such real estate having been listed in any other name than that of the rightful owner or owners.

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* So in original.

2398. The foregoing provisions shall apply to all taxes now due or heretofore delinquent, or that may hereafter become due and delinquent. Whenever any municipal tax or taxes levied for any former year shall remain uncollected because of any defect, error, or **irregularity** in either the power or manner of making the levy thereof, it shall be lawful for the mayor and council of such city to again levy a tax upon the property so delinquent in lieu of such former tax or taxes, and at the same rate and upon the same assessment as such former tax or taxes levied; and such tax or taxes shall be inserted in the tax list and shall be collected in the same manner as other general taxes are. The city **council** may at any time **correct** any error or defect, or supply any omission in the assessment or listing of any property subject to municipal tax made for the purpose of taxation for the then current fiscal year, and may require any and all persons to appear and answer under oath as to their possession or control of personal property subject to municipal taxation; and the mayor and council by ordinance may make such compromise, settlement, or adjustment of any action or litigation concerning the validity, legality, or regularity of any tax or taxes, levied for city purposes, as they may deem just and expedient, and the city treasurer shall conform thereto in his action respecting the collection of taxes under any tax list in his hand. These provisions shall apply to general municipal taxes and to special assessments, as far as the same may be applicable, unless otherwise provided in the ordinance levying the same. **Special taxes** and assessments, except for paving purposes, shall be deemed **delinquent** if not paid in fifty (50) days after the passage and approval of the ordinance levying the same, in each case; and interest at the rate of one per cent a month, payable in advance, shall be paid on all delinquent special taxes or assessments from the time the same shall become delinquent.

2399. The city **treasurer** shall receive all moneys belonging to the city, and shall keep his books and accounts in such manner as the mayor and council may prescribe, and such books and accounts shall be always subject to inspection of the mayor, comptroller, members of the council, and such other officers or agents as they may designate. All citizens of this state, and other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

2400. All **warrants** shall be drawn by the comptroller upon the treasurer and must be signed by the mayor and the comptroller, stating the particular fund or appropriation to which the same is chargeable, and the person to whom payable, and no money shall be otherwise paid on account of the city than upon such warrants so drawn, unless otherwise provided by law or ordinance.

Amended 1889, p. 124.

2401. The city **treasurer** shall keep a separate **account** of each fund or appropriation, and the debts and credits belonging thereto. He shall give every person paying money into the city treasury a **receipt** and keep a duplicate thereof, specifying the date of payment, and upon what account paid; and he shall also file copies of such receipts with the comptroller on the first day of each month.

Amended 1889, p. 125.

2402. The **treasurer** shall at the end of each month, and every month, and oftener, if required, render an **account** to the mayor, city council, and comptroller, showing the state of the treasury at the date of such account, and the balance of money in the treasury, and particularly showing the several balances to the credit of each fund on account of which bonds may have been issued. He shall also accompany such accounts with a **statement** of all moneys received into the treasury and on what account, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be delivered to the comptroller, and filed with his said account in the comptroller's office upon every day of such settlement. He shall return all **warrants** paid by him, stamped or marked "paid," and shall give a list of such warrants, stating the number and amount of each. The treasurer shall **register,** by making a brief descriptive record thereof, all warrants presented for payment and not paid for want of funds; and whenever funds accrue in his hands sufficient to take up and **pay** any warrants so registered, he shall give notice thereof, describing said warrant or warrants, by advertisement in the official paper of the city three times, and thereafter and from the date of said notice all interest upon said warrant or warrants so advertised shall cease and determine.

Amended 1889, p. 125; 1891, p. 100.

2403. All **funds** of the city shall, as the same accrue, be by the city treasurer placed on deposit in such banks within said city as shall agree or offer to pay the best rates of interest for the use of such funds so **deposited**; and the city council is hereby directed to advertise for bids for the deposit of such funds as is hereby contemplated. Such banks shall pay to the city treasurer monthly **interest** on the daily balances in such respective bank for the current month, and such interest moneys shall be **reported** by the treasurer to the city council and comptroller, and be covered into the general fund of such city; *Provided*, The bank or **banks** so selected shall give **bond** to the city, to be approved by the city council, for the safe keeping of said deposits, in double the amount of money at any one time in their possession; *Provided, also*, That no deposit shall at any time be made in any bank having less than two hundred thousand ($200,000) paid up **capital** stock; and no deposit shall be made in any bank in excess of forty-five (45) per cent of its paid up capital stock. The **treasurer** shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys; and he is hereby expressly **prohibited from using,** either directly or indirectly, the corporation money or warrants in his custody and keeping, for his own use and benefit or that of any other person or persons whomsoever. Any violation of this provision shall subject him to immediate removal from office by the city council, who are hereby authorized to declare such office vacant; and the mayor, with the consent of the city council, shall appoint a successor, who shall hold his office for the remainder of the term unexpired of such officer so removed. The provisions herein as to deposit of funds shall not take effect until the successor of the present incumbent has been duly elected and qualified.

Amended 1891, p. 101.

2404. The **treasurer** shall **report** to the mayor and council annually, on the first Tuesday of January, a full and detailed account of all receipts and expenditures during the preceding fiscal year, and the state of the treasury, and a statement in detail of the indebtedness and financial condition of the city. He shall also keep a **registry** of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund for which paid, and the persons to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee at the time of making such annual report.

Amended 1889, p. 126.

2405. Each and every **fund** created by this act shall be strictly devoted to the purpose for which it was created, and shall **not** be **diverted,** transferred, or borrowed therefrom; any member of the city council voting to so divert, transfer, or borrow the money in any fund shall be liable on his official bond for the amount so diverted, transferred, or borrowed; *Provided, however,* That any **balance** remaining in any special fund, after the payment of all liabilities against such fund, shall be transferred to the general fund of the city; *Provided, also,* That **inspectors** of **public work** paid from special funds may receive **pay** for their services from the general fund of the city, monthly, as other employees. Upon the completion of such work, and levy and collection of the special fund to pay for the same, an amount equal to that paid said inspectors from the general fund may be taken from such special funds and returned to the general fund from which it was temporarily taken; and the mayor and council are hereby authorized to include the cost of inspection in such special funds to be levied and collected.

Amended 1889, p. 126; 1891, p. 102.

2406. All moneys received on any **special assessment** shall be held by the treasurer as a special fund to be **applied** to the payment of the improvement for which the assessment was made, and such money shall be used for no other purpose whatever; *Provided,* That the mayor and council shall have the power and it shall be their duty by ordinance in concurrent resolution, whenever they shall deem proper so to do to prevent loss accruing interest, to provide and require that any money to the credit of any special fund on account of which bonds may have been issued, to be invested in short time bonds of the city, or in other good and safe securities, and said mayor and council shall approve, so as to realize in such bonds or securities at maturity of the bonds issued on account of such fund.

Amended 1889, p. 127.

2407. The **treasurer** shall be **collector** of taxes for the city, and shall give **bonds** in a sum not less than two hundred thousand dollars ($200,000), or double the amount of money likely to come into the hands of such treasurer, to be approved by the mayor and council, for the honest and faithful performance of the duties of his office, and for the safe keeping of all public funds collected or received by him; said bond to be filed and recorded in the office of the city clerk. The treasurer and his sureties shall be liable on his bond for the safe keeping of all public funds collected or received by such treasurer, and for all taxes and assessments not collected by him according to law, whenever such taxes or assessments remain uncollected by him, by reason of any neglect of duty, want of due diligence, or failure on his part to comply with the laws and ordinances relating to the collection of taxes.

2408. There shall be in each city of the metropolitan class a **board of public works** which shall consist of three **members,** residents of such city, to be appointed by the mayor, by and with the consent of the council, before the first Monday of July, 1887, for the **term** of one, two, and three years respectively, the term of office of each to be designated by the mayor, and annually thereafter there shall be appointed, as hereinbefore provided, one member, whose term of office shall be three years. The mayor, by and with the consent of the council, shall designate one of the members of such board to be chairman thereof. The **salaries** of the members of such board of public works shall be fixed by ordinance, and the salary of the chairman shall not exceed twenty-five hundred dollars ($2500) per annum, and the salary of each of the other members shall not exceed the sum of one thousand dollars ($1,000) per annum. Each member of said board shall, before entering upon the discharge of his duties, take an oath to faithfully discharge the duties of his office, and enter into a **bond** to such city with two or more good and sufficient suretieis, to be approved by the mayor and council, the bond of the chairman to be in the sum of fifteen thousand dollars ($15,000), and the other two in the sum of ten thousand dollars ($10,000) each, conditioned for the faithful performance of his duties as such member of such board of public works. The chairman of such board shall devote his entire time to the performance of his official **duty,** and no member of such board shall ever be directly or indirectly interested in any contract entered into by them on behalf of such city, nor shall they be interested, either directly or indirectly, in the purchase of any material to be used.or applied in or about the use or purposes contemplated by this act. It shall be the duty of such board of public works, and it shall have power, to make contracts on behalf of the city for the performance of all such works and the erection of such improvements as may be ordered by the mayor and council, but only with the approval of the mayor and council; to superintend the performance of all such work, and the erection of such improvements. It shall also be the duty of said board to approve the estimates of the city engineer, which may be made from time to time, of the value of work as the same may progress; to accept any work or improvement made, when the same shall be fully completed according to contract, subject, however, to the approval of the mayor and council, and to perform such other duties as may be devolved upon them by ordinance. The supervision of the construction of city halls, market houses, jails, or other public buildings now in process of erection or contracted for, shall not come within the control or direction of said board. A majority of the members of said board shall constitute a quorum for the transaction of any business coming within the control or jurisdiction of the same; the presence of the chairman of said board shall be necessary to constitute such quorum. Any **member** of such board may at any time be **removed** from office by a vote of two-thirds of the members elected to the council, with the approval of the mayor, for sufficient cause, and the proceedings in that behalf shall be entered in the journal of the council; *Provided,* That the council shall previously cause a copy of the charges preferred against such member sought to be removed, and notice of the time and place of hearing the same, to be served on him ten days at least previous to the time so assigned, and opportunity shall be given him to make his defense.

Amended 1889, p. 127; 1891, p. 103.

2409. A city **engineer** shall be appointed by the mayor by and with the consent of the city council. Before assuming the duties of his office he shall make **oath** faithfully to perform the duties of his office, and he shall give a **bond,** with not less than two good and sufficient sureties, to the satisfaction of the mayor and council, in the sum of twenty-five thousand dollars ($25,000), for the faithful performance of his duties. He shall receive a **salary** of three thousand dollars ($3,000) per annum, which shall be in full for all his services. He shall devote his entire time to the **duties** of his office, and he shall not receive any fees or perquisities in addition to his salary. He shall notify the board of public works of the completion of all contract work prior to the acceptance thereof, and after the same shall have been accepted by the board of public works he shall prepare and submit final estimates of the same, of which he shall keep a duplicate copy for the approval of said board. He shall keep and preserve in a proper manner all books, maps, profiles, and other records belonging to the city, and connected with his department, and shall deliver the same to his successor in office. The engineer shall make all necessary surveys and furnish such plans, plats, profiles, estimates, and such other information relating to or concerning public work as shall be required by the board of public works. He shall have the right to appoint an **assistant** engineer, subject to the approval of the council, who shall, in the event of his sickness or absence, in addition to other work required of him, be empowered to perform all the duties devolving upon the city engineer during such sickness or absence. Such assistant engineer shall qualify the same as the city engineer, and furnish a bond in the sum of ten thousand dollars ($10,000), with two good and sufficient sureties, as security for the faithful discharge of his duties. The assistant engineer shall receive as compensation the sum of two thousand dollars ($2,000) per annum, which shall be in full for all services rendered, and he shall not receive any fees or perquisites in addition to his salary.

Amended 1889, p. 130.

2410. In each city of the metropolitan class there shall be a **board for** the **inspection of buildings,** which shall have charge of the enforcing of all ordinances pertaining to party walls, or the erection, constructon, alteration, repairs, or removal of buildings, and the arrangement of heating appliances. A majority of the members of such board shall constitue a quorum. The chief officer of such board shall be called the "**inspector** of buildings" and shall be the executive officer of such board. He shall be appointed at the same time and in the same manner as the other appointive officers of the city, and shall receive a **salary** at the rate of two thousand dollars ($2,000) per annum, which shall be in full for all services rendered by him, and he shall not be allowed any further fee or perquisities. He shall charge and collect such sums for building permits as may be authorized by ordinance, and shall pay over to the city treasurer all money collected, at the end of each month. The inspector of buildings shall be an able, experienced architect, builder, or mechanic, **competent** to perform all the duties of the office to which he is appointed, and shall not, during his term of office, be employed or engaged in any other vocation or business. The city engineer and chief of the fire department, or such other officers or persons as may be designated by ordinance, shall be the other members of the board for the inspection of buildings. The board for the inspection of buildings and the inspector of buildings shall have and exercise such other powers and duties as may be prescribed by ordinance and concurrent resolution.

Amended 1891, p. 105.

2411. In each city of the metropolitan class there shall be a board of **park commissioners,** who shall have charge of all the parks and public grounds belonging to the city, and the streets and alleys in any cemetery situated within the limits of such city, which said streets and alleys have been or may hereafter be dedicated to and for the use of the public without obligation to keep in repair by said board; with power to establish rules for the management, care, and use of public parks and park-ways, streets, and alleys; and it shall be the duty of said board from time to time to devise, suggest, and recommend to the mayor and council a system of public parks, park-ways, and boulevards, or additions thereto, within the city or within six miles of the limits thereof, and to designate the lands and grounds necessary to be used, purchased, or appropriated for such purpose. And thereupon it shall be the duty of the mayor and council to take such action as may be necessary for the appropriation of the lands and grounds so designated, and for the purpose of making payments for such lands and grounds, assess such real estate as may be specially benefited by reason of the appropriation thereof for such purpose, and issue bonds as may be required for such purpose, to the extent and amount required in excess of such assessment. And said mayor and council are further authorized upon the recommendation of said park commission, and with their concurrence to negotiate for, and purchase in the name of said city, **lands** within the limits herein designated to be used and improved **for park purposes,** notwithstanding said limits include land within the corporate boundaries of other cities or villages, and if such lands are in the limits of other cities or villages, said cities or villages shall cease to have jurisdiction over the said lands after the said land is acquired for park purposes as aforesaid, by gift, purchase, condemnation, or otherwise, and said commission are hereby authorized to purchase or condemn land in cities or villages within said limits. And for the purpose of paying for and improving the same, may appropriate money from the general fund of said city not otherwise appropriated, or may issue bonds for the purpose of such purchase and improvement to an amount not to exceed five hundred thousand dollars ($500,000) within three years from the taking effect of this act, and thereafter not to exceed fifty thousand dollars ($50,000) per year. Said bonds to be designated and known as "Park Bonds" and to be issued and used in accordance with the provisions governing the issuance of sewer, funding, and other public improvement bonds by this act contemplated; *Provided,* No such bonds shall be issued until the question of their issuing the same has been submitted to the electors of the city at a general election therein, and authorized by a vote of two-thirds ($\frac{2}{3}$) of the electors voting on such question at such election. Where improvements are made upon or in streets or sidewalks adjacent to, and abutting upon parks, park-ways, and similar grounds in the charge and control of said board of park commissioners, the cost or expense of which would otherwise be chargeable to the city the same shall be paid from the "Park" fund tax hereinafter provided; and said commissioners are hereby directed to pay the cost of such improvements. Said board of park commissioners shall be composed of five (5) **members** who shall be resident freeholders of such city, and who shall be **appointed** by the judges of the district court of the judicial district in which such city shall be situated. The members of said board shall be appointed by said judges, a majority of said judges concurring, on the second Tuesday of May, 1889, or on the second Tuesday of May following the creation under this act of any city of the metropolitan class, one for the **term** of one year, one for the term of two years, one for the term of three years, one for the term of four years, and one for the term of five years; and after the appointment of said five members, it shall be the duty of said judges, a majority concurring, to appoint or reappoint one member of said board each year, on the second Tuesday of May. A majority of all the members of the board of park commissioners shall constitute a quorum. It shall be the **duty** of said board of park commissioners to lay out, improve, and beautify all grounds now owned or hereafter acquired for public parks, and employ a secretary, and also such landscape gardeners, superintendents, keepers, assistants, or laborers, as may be necessary, for the proper care and maintenance of such parks or the improvement or beautifying thereof, to the extent that funds may be provided for such purposes. The members of said board, at its first meeting each year, after the first Tuesday in May, shall elect one of their own members as chairman of said board. Before entering upon their duties each member of said board shall take an oath, to be filed with the city clerk, that he will faithfully perform the duties of his appointment, and in the selection or designation of lands for parks or boulevards, and in making appointments, he will act for the best interests of such city and the public, and will not in any manner be actuated or influenced by personal or political motives. The chairman of said board shall receive the **salary** of six hundred dollars per annum, and the other members of said board of park commissioners shall each receive a salary of two hundred dollars per annum. For the purpose of paying such salaries, providing funds for laying out, improving, or beautifying parks and public grounds, and providing for the payment of the salaries and wages of the employes of said board, the mayor and council shall each year, at the time of making the levy of taxes for general city purposes, make a levy of not less than one and one-half mills, and not exceeding three mills on the dollar valuation on all the real estate and personal property within the corporate limits of such city, taxable according to the laws of this state, and such **fund** to be known as the "Park" fund, the warrants thereon to be drawn only in payment of accounts or claims audited by the said board of park commissioners. And the mayor and council are hereby authorized and empowered to make a levy for the purposes required by this section for the year 1889, upon the first Tuesday of April, or the first regular meeting of the council after the passage and approval of this act; *Provided*, That when the total valuations of property in said city for purposes of taxation shall in any one year exceed the sum of twenty-five millions of dollars, then, and in that case, the rate of levy for the tax herein provided shall be reduced and decreased in exact ratio and proportion to the increase in valuation of taxable property over and above the sum of twenty-five millions of dollars.

Amended 1889, p. 131; 1891, p. 106

2412. In all cities of the metropolitan class there shall be a **boiler inspector**, who shall be appointed by the mayor, with the approval of the city council. The boiler inspector shall be a practical, mechanical engineer, and perform such duties and have such **powers** concerning the inspection of steam boilers within the city as may be prescribed by ordinance, and he shall be authorized to charge such fee for the inspection of steam boilers and other steam generators as may be prescribed by ordinance, which he shall pay to the city treasurer at the end of each month, and he shall receive a **salary** at the rate of eighteen hundred (1800) dollars per annum, payable monthly, which shall be in full for all his services, and he shall not receive any other fee or perquisite.

Amended 1889, p. 134.

2413. The **comptroller** shall act as the general accountant and fiscal agency of the city, and shall exercise a general supervision over all officers of the city charged in any manner with the receipt, collection, or disbursement of the city revenue. He shall be a competent book-keeper and accountant, and it shall be his **duty**, under the direction af the mayor and city council, to keep a complete set of books, wherein shall be stated, among other things, the amount of the appropriation that has been made or the fund that has been created for each distinct object of expenditure and the amount that has been expended on account of such appropriation fund. He shall also keep full, clear, correct, and separate accounts of all the revenue, funds, and incomes payable into the city treasury, and of all disbursements on account thereof. He shall always keep accurate and separate accounts between the city and officers of the city, and between the city and all contractors or other persons doing work or furnishing material for the city. He shall also keep a regular and accurate account of debit and credit with the city treasurer, charging said treasury with the amount of taxes levied on the assessment roll, and giving him credit for all duplicate receipts furnished with his statements, and keep an account in like manner with said treasurer whenever assessments or appropriations are made, and expenditures ordered for any special object. He shall also carefully examine and check the annual report of the city treasurer and communicate to the city council, as soon thereafter as practicable, the result of such examination; and he shall also carefully examine each month the account, statement, and vouchers required by law to be rendered at the end of each month by the city treasurer, making from time to time such reports to the city council concerning such account and statement as may seem necessary and proper. He shall also keep a record of the bonds issued by the city and of the payment and cancellation of all bonds of the city, and shall see that all bonds, upon payment thereof, are properly canceled and destroyed. He shall perform such other duties as may be required by ordinance, and he shall devote his entire time to the duties of his office, and he shall furnish a **bond,** with at least two good and sufficient sureties to be approved by the council, in the sum of ten thousand dollars ($10,000), conditioned upon the faithful performance of his duties. It shall be the duty of the mayor, on or before the first day of February of each year, to secure from the head of each department of the city an estimate of the probable cost of such department for the current year following, and he shall submit such **estimate** to the city council, who shall thereupon make such corrections as shall be needed to embody the total expenditures on each of the several funds of the city, including rents, salaries, repairs, etc., and one copy of such revised estimate shall, within two weeks, be filed with the city comptroller, the mayor, and city clerk respectively. The comptroller shall thereupon deduct the amounts so shown from the limits of funds available for the expenditure of the city for the current year, and no contract or vote incurring an indebtedness for moneys payable out of any fund shall be made by the mayor or city council, and no final action shall be taken upon such proposed contract or indebtedness without the certificate of the comptroller that there are funds available to pay the same. And in no event shall any contract be made or indebtedness created in excess of the limit authorized by law, except in the event of an unforeseen accident requiring the immediate repair for the public good, which fact must be certified to by the board of public works, and only then with the concurrence of the mayor and two-thirds of the entire council. All **bonds** to be issued by cities of the metropolitan class shall be prepared and **registered** by the city comptroller before delivery to the city treasurer for issuance, and it shall be the duty of the city treasurer to promptly report to the comptroller detailed statements of all receipts of moneys from the proceeds of the sale of bonds, and to whom such bonds were sold. All **warrants** for payment of liabilities of the city shall be made and **signed** by the comptroller, signed by the mayor and issued by the comptroller. A monthly statement of all moneys and fees received by officers for the city must be reported on the first day of each subsequent month to the comptroller, in addition to the statement said officials are required to furnish to the treasurer. The comptroller is hereby authorized and empowered to appoint one **deputy** to be paid by the city, but for whose acts and doings said comptroller shall be responsible. And during the absence, disability, or inability to act as said comptroller, said deputy may, and he is hereby authorized, to do and perform any and all acts that might by such comptroller himself be done and performed if present. Such appointment shall be in writing, and the same be reported in writing to the city council by the comptroller.

Amended 1889, p. 134; 1891, p. 110.

2414. A **city attorney** shall be appointed by the mayor, by and with the consent of the city council. It shall be the **duty** of the city attorney to attend to all cases in any court in this state, except the police court and appeal cases therefrom, wherein the city may be a party, plaintiff or defendant, or a party in interest; to advise the city council, or any committee thereof, in writing when required, as to all legal questions that may arise before them; to advise the mayor and all other officers in relation to their duties, and from time to time to make such reports in relation to the suits in which the city is interested as may be required by the mayor or city council, and to perform such other duties, not inconsistent with the duties imposed by this act, as by ordinance may be directed.

Amended 1891, p. 113.

2415. An **assistant city attorney,** who shall be designated and nominated by the city attorney, shall be appointed by the mayor, by and with the consent of the city council. It shall be the **duty** of the assistant city attorney, under his direction, to assist the city attorney in the trial of all cases in which it is the duty of the city attorney to engage, and perform such other official duties as may be directed by the city attorney. He shall, in the absence, sickness, or inability to act, at his request, perform the duties of the city attorney, and shall attend the regular meetings of the city council; he shall attend to all cases on appeal from the police court for the violation of any city ordinances, and may appear and assist the city prosecutor in the trial of any case in the police court when deemed advisable; and shall perform such other duties as may be prescribed by ordinance. A **city prosecutor** shall also be appointed by the mayor, by and with the consent of the city council. It shall be the **duty** of the city prosecutor to attend all sessions of the police court, and file and prosecute all criminal complaints against persons charged with the violations of the ordinances of the city or laws of the state within the final jurisdiction of the court. He shall be active and vigilant in the enforcement of all ordinances of the city and shall cause all violations of the ordinances of the city to be prosecuted.

Amended 1891, p. 114.

2416. All **grading,** paving, macadamizing, curbing, or guttering of any streets, avenues, or alleys in the city shall be done by **contract** with the lowest responsible bidder, or by day's work, as petitioned by property owners, representing a majority of the property in front feet, in any paving district, under the direction and supervision of the board of public works; *Provided, also,* That in all matters of contract with the city for work to be done or material furnished, parties contracting shall give **bond** to the city, with not less than two sureties, in double the amount of said contract, for the faithful performance of the same. Sureties on said bonds shall be resident freeholders of the county within which said city is situate, and shall justify under oath that they are worth double the amount for which they may sign said bond, over and above all debts, liabilities, obligations, and exemptions; *Provided, also,* That no contracts or extensions of contracts for a period of more than two years shall at any time be made or entered into, without first having submitted the same to a vote of the people at some general election, held in accordance with existing laws governing the voting of bonds. Such provision shall not apply to guarantee for paving or other work done for or material furnished to said city. No action shall at any time be taken contemplating the extension or renewal of franchises heretofore granted.

Amended 1891, p. 115.

2417. When any improvement mentioned in this act is completed according to contract, it shall be the duty of the city **engineer** to carefully **inspect** the same, and if the improvement is found to be properly done, such engineer shall accept the same, and forthwith report his acceptance thereof for the confirmation or rejection of the board of public works and city council, who may confirm or reject such **acceptance.** When the contract for such work provides for the acceptance thereof, in front of or along any block or piece of ground, the engineer may accept the same in sections from time to time, if found to be done according to contract, reporting his acceptance as in other cases; *Provided,* Nothing in this act contained shall be construed to interfere with or affect contracts of such cities for public works now existing, and all such contracts shall be governed by the acts and ordinances existing at the time they were made.

2418. The mayor and council shall have power to provide for the **sprinkling** of the **streets** of said city, and for the purpose of accomplishing such sprinkling, may, by ordinance, create suitable districts, to be called and designated "Sprinkling

Districts," and may order and direct the work of sprinkling to be done and performed upon the streets, alleys, park ways, boulevards, or any or all thereof therein. Said sprinkling shall be done only upon contract in writing let upon advertisement to the lowest responsible bidder; such advertisement shall specify the district or districts proposed to be sprinkled, especially describing the same, and bids shall be made and contracts let with reference to such district or districts so specified. For the purpose of paying the cost of sprinkling herein contemplated and so contracted for, the mayor and council shall have power and they are hereby authorized to levy and assess the cost of sprinkling in any district or districts upon all lots, lands, grounds, property and estate therein; such tax or assessment to be equal and uniform upon all feet front of property within or abutting upon the streets, alleys, park ways, or boulevards within the district so created. Such a tax and assessment shall be a lien upon all such lots, lands, and real estate, and shall be enforced and collected as are other special taxes.

Amended 1891, p. 116.

2419. The mayor and council of any city governed by this act shall have power by ordinance to establish the grade of any street, avenue, or alley in the city, and when the grade of any street, avenue, or alley shall have been heretofore established, or when the grade of any street, avenue, or alley shall be established and approved as herein provided, the grade of no street or part of a street shall be changed unless the consent in writing is first obtained of the owners of lots or lands abutting upon the street or part of street where such change of grade is to be made, who represent a majority of the feet front thereon, and not then until the damages to property owners which may be caused by such change of grade shall have been assessed and determined by three disinterested freeholders, who shall be appointed by the mayor and council for that purpose, who shall make such appraisement, taking into consideration the benefits, if any, to such property, and file their report with the city clerk; and the amount of damages so assessed shall be tendered to such property owners or their agents as soon as the funds for that purpose are obtained from the assessments of such damages upon property benefited by reason of such change of grade, or otherwise realized; *Provided,* That no street, avenue, or alley shall be worked to such change of grade until the damages so assessed shall be tendered to such property owners or their agents.

Damages occasioned by a change of the established grade of a street cannot be reimbursed to the city by means of a special assessment laid upon the lots abutting said street. 10, 99 (4 N. W., 424).

2420. Before any street, avenue, or alley shall be ordered graded, the damages, if any, by reason of such grading to property along that portion of the street proposed to be graded, including approaches thereto, shall first be ascertained and determined by three disinterested freeholders, who shall be appointed by the mayor and council for that purpose, who shall make such appraisement, taking into consideration the benefits, if any, to such property, and who shall exclude any damages resulting from any change or changes of the original or first established grade; and the amount of damages so assessed, unless an appeal is taken, shall be due and payable to such property owners, or their agents, in sixty days after the completion and acceptance of such work or grading.

2421. Whenever it shall become necessary to appropriate private property for the use of the city for streets, alleys, avenues, sewers, parks, boulevards, public squares, gas-works, water-works, or such other purpose authorized by this act, and such appropriation shall be declared necessary by ordinance, the mayor, with the approval of the council, shall appoint three disinterested freeholders of the city, who, after being duly sworn to perform the duties of their appointment with fidelity and impartialty, shall assess the **damages** to the owners of the property respectively taken by such appropriation. Such assessment shall be reported to the council for confirmation, and if the same shall be confirmed, the damages so assessed shall be paid to the owners of such property, or deposited with the city treasurer subject to the order of such owners respectively, after which such property may at any time be taken for the use of the city. If the assessment be not confirmed by the council, proceedings may be taken anew to assess the damages.

Amended 1889, p. 138.

2422. The council shall have power and is hereby authorized to **assess** the **damages** awarded or recovered for grading, change of grade, or for the appropriation of private property, **upon** the lots and **lands** benefited, which shall abut or be **adjacent** to the street, avenue, or alley graded, or for the opening, extending, or widening of which private property shall be appropriated, or on which the grade shall be changed, and in the case of appropriation of land for widening of a street, avenue, or alley, the council may consider, for the purpose of determining benefits and equalizing such assessment, whether any portion of the street, avenue, or alley had been previously donated from any lot or piece of land abutting or adjacent thereto.

2423. In all cases of **damages** arising under the provisions of this act, the party or parties whose property is damaged or sought to be taken by the provisions of this act, shall have the right to **appeal** from such assessment of damage, to the district court of the county in which such property is situated, within thirty days after the assessment provided for in this act, and in case of such appeal the decision and finding of the district court shall be transmitted by the clerk thereof, duly certified, to the city clerk to be filed and recorded in his office; but such appeal shall not delay the appropriation of the property sought to be taken, or delay the improvement proposed, or retard the change of grade sought to be made, and in no case shall said city be liable for the cost on such appeal, unless the owner of such real estate shall be adjudged entitled upon the appeal, to a greater amount of damage than was awarded by said freeholders. The remedy by appeal, herein allowed, shall be deemed and held to be exclusive, and no person shall be allowed to prosecute or maintain any original action to recover any damages herein authorized or provided for.

2424. In all cases of damages arising under the provisions of this act, upon **appeal** being taken by any person from any award or assessment of damages, the city shall have the right, upon giving five days' notice to the person or persons appealing, to have such appeal placed upon the trial docket or calendar of the court to which such appeal may be taken, at the head of the list of cases for trial, and such appeals shall have **priority** and precedence **in** the order of **trial** thereof over civil actions, and the court shall so arrange the call of cases for trial as to give such appeals such priority and precedence.

2425. The **enacting clause** of all **ordinances** shall be as follows: "Be it ordained by the city council of the city of ———."

2426. All **ordinances** of the city shall be passed pursuant to such rules and regulations as the council may prescribe; *Provided,* That upon the **passage** of all ordinances, the yeas and nays shall be entered upon the record of the city council, and a majority of the votes of all the members of said council shall be necessary to their passage; *Provided further,* That no ordinance shall be passed the same day, or at the same meeting it is introduced, except the general appropriation ordinance at the first meeting of each month.

2427. [**Same—Evidence.**]—All ordinances of the city may be proven by the certificate of the clerk under the seal of the city, and when printed or published in a book or pamhlet form, and purporting to be published or printed by authority of the city council, shall be read and received in all courts and places without further proof.

2428. At the first meeting of the council in each month the mayor and council shall provide by **ordinance** for the payment of all liabilities of the city incurred during the preceding month, or at any time prior thereto. No money shall be expended or payment made by the city except in pursuance of a specific **appropriation** made for that purpose by ordinance, and no liability shall be incurred, debt created, or contract involving the expenditure of money approved by the city council, except by a majority of the entire council, upon call of the yeas and nays, and the record of the council proceedings shall show how each member voted, and any councilman voting to incur any liability or to create any debt in excess of the amount limited or authorized by law, or if the mayor shall approve any ordinance or contract involving the expenditure of money in excess of the amount limited or authorized by law, and any liability sought to be incurred or debt created, in excess of the amount limited or authorized by law, shall be taken and held by any court of the state as the joint or several liability and obligation of the councilmen voting for and the mayor approving the same, and not the debt, liability, or obligation of the city, and the voting for or approving of such liability, obligation, or debt shall be conclusive evidence of malfeasance in office, and for which such councilman or mayor may be removed from his office.

Amended 1889, p. 138.

2429. Any **ordinance** appropriating moneys shall be subject to the **veto** of the mayor, and the mayor may veto any single item in any such ordinance, and if such item be not passed over his veto, such item shall be stricken out, and shall not be paid by the city.

2430. Every **resolution** adopted, or contract approved by the city council **appropriating** or involving the expenditure of **money,** and every ordinance passed by the city council shall, within forty-eight hours after the action of the city council, be presented to the mayor for his approval, and he shall have at least three days thereafter for the **consideration** thereof. If he approve the resolution, contract, or ordinance, as the case may be, he shall sign the same and return the same to the city clerk, and so report to the council at its next regular meeting, after the expiration of the time herein limited. If not, he shall return the same with his objections in writing to the city council, at its next regular meeting, after the expiration of the time herein limited. When any ordinance, contract, or resolution shall be returned without the approval of the mayor, the council shall thereupon consider whether the same shall be approved, notwithstanding the objections of the mayor. If two-thirds of all the members elected shall vote in the affirmative, such ordinance, contract, or resolution shall be considered approved, and shall take effect and be valid in the same manner and with like force, as if it had received the approval of the mayor; and should the mayor fail, neglect, or refuse to approve any ordinance, contract, or resolution, or return the same with his objections in writing, within the time herein limited, the same shall take effect and be valid in the same manner and with like force as if approved by him.

2431. The city **council** shall have power to elect one of their own body **president** of the council, who shall preside at all meetings of the council, and in his absence to elect one of their own body to occupy his place temporarily, who shall be styled acting president of the council, and the president or acting president, when occupying the place of the mayor, shall have the same powers as the mayor, and shall also have the same rights and privileges as other members of the council.

2432. A **city clerk** shall be elected by the council at the first meeting of organization or as soon as practicable thereafter. He shall hold office for the **term** of two years from date of election; shall give **bond** to be approved by the council, and filed with the comptroller, with two good and sufficient sureties, freeholders, in the sum of five thousand dollars ($5,000), conditioned for the proper fulfillment of the duties of his office. He shall devote his entire time to the duties of said office, and shall receive **compensation** therefor in the sum of two thousand ($2,000) dollars per annum, payable monthly.

Amended 1889, p. 139; 1891, p. 117.

2433. The **council,** or any committee of the members thereof, shall have power to compel the attendance of **witnesses** for the investigation of matters that may come before them, and the presiding officer of the council, or the chairman of such committee for the time being, may administer the requisite oaths; and such council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

2434. The mayor and any five councilmen shall have power to call **special meetings** of the council, the object of which shall be submitted to the council in writing, and the call and object and the disposition thereof shall be entered upon the journal by the clerk.

2435. The council shall have power to act as a **board of equalization** for the city to equalize all taxes and assessments, and to correct any errors in the listing of valuation of property, and to supply any omission in the same, and shall have the same powers as county commissioners have in similar cases. A majority of all the members elected to said council shall constitute a quorum for the transaction of any business properly brought before them, but a less number may adjourn from time to time and compel the attendance of absent members. When sitting as a board of equalization, the council may adopt such reasonable **rules** as to the manner of presenting complaints and applying for remedy and relief, as shall seem just. It shall not invalidate or prejudice the proceedings of said board that a majority of members thereof do not, after organization by a majority, continue present at the advertised place of sitting, during the advertised hours of sitting; *Provided,* The city clerk or some member of said board shall be present to receive complaints, applications, etc., and give information; *And provided,* No final action shall be taken by such board except by a majority of all the members elected to the city council, comprising the same, and in open session.

Amended 1891, p. 117.

2436. The council at the commencement of each year, or as soon thereafter as may be, shall designate some daily newspaper printed in the city, as the **official paper** of the city, in which shall be published all general ordinances and all notices and other proceedings required by law or ordinance to be published. All publishing of the city shall be let by contract to the lowest responsible bidder, and the newspaper which shall be awarded the contract as the lowest responsible bidder, for publishing all the matters hereinbefore specified, shall be the one designated as the official paper of the city; *Provided,* That said paper shall have at least two thousand (2,000) actual and *bona fide* subscribers for one year last preceding the time of bid.

Amended 1889, p. 140.

2437. The **mayor** shall be the chief executive officer of and a conservator of the peace throughout the city and shall have **power,** by and with the concurrence of the board of police commissioners, to appoint any number of special policemen which he may deem necessary to preserve the peace of the city, and to dismiss the same at pleasure. He shall sign the commissions or appointment of all officers elected and appointed by the city government. He shall have such **jurisdiction** as may be vested in him by ordinance over all places within three miles of the corporate limits of the city for the enforcement of any health or quarantine ordinance or regulation thereof.

Amended 1889, p. 140; 1891, p. 118.

2438. The **mayor** shall have power, by and with the consent of a majority of the entire council, to **appoint** all officers that may be deemed necessary for the good government of the city other than those otherwise provided for in this act; and he shall have power in like manner to **remove** from office, by and with the consent of the council, any person or persons so by him appointed thereto.

Amended 1889, p. 141; 1891, p. 118.

2439. He shall have the **superintending control** of all the officers and affairs of the city, except when otherwise specially provided, and shall take care that the provisions of this act and the ordinances of the city are complied with. He may, when he deems it necessary, require any officer of the city to exhibit his accounts or any other papers, and to make report to the council in writing touching any subject or matter he may require pertaining to his office.

2440. He shall, from time to time, communicate to the city council such information and **recommend** such measures as in his opinion may tend to the improvement of the finances, police, health, security, ornament, comfort, and general prosperity of the city. He shall be active and **vigilant** in enforcing all laws and ordinances of the city, and shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty. He shall give written **notice** to the city clerk of his intended absence before leaving the city.

2441. The **mayor** and chief of police shall each have power to **call upon** any **citizen** to aid in the enforcement of any ordinance or suppression of any riot, and any person who shall refuse or neglect to obey such call shall forfeit and pay a fine not exceeding one hundred dollars.

2442. When any **vacancy** shall happen in the office of mayor, by death, resignation, absence from the city, removal from office, refusal to qualify, or otherwise, the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges, powers, and jurisdictions of the regular mayor, until such vacancy be filled, or such disability removed; or in case of temporary absence, until the mayor shall return; and during that time he shall receive the same compensation that the mayor would be entitled to.

Amended 1889, p. 141.

2443. The mayor and council shall cause to be published annually, on or before the first day of March, a statement of the receipts and expenditures of the **city** and the **financial condition** of the same for the preceding fiscal year; such fiscal year shall be deemed to commence January first and to terminate December thirty-first (31), annually; *Provided*, It is hereby made the duty of the city treasurer, city clerk, comptroller, city engineer, city attorney, city prosecutor, police judge, inspector of buildings, board of fire and police commissioners, board of public works, board of health, board of park commissioners, and each and every other official, board, or department of the city, now existing, or hereafter appointed or created, and whether or not the same be herein specified—not including members of the city council—to **report** to the mayor and city council in writing, annually, on or before the first day of February, a full and detailed statement of all receipts and expenditures, funds, property; and of all acts, doings, transactions, employments, and proceedings of their and each of their said board, department, position, or office—for and during the preceding fiscal year.

Amended 1889, p. 142; 1891, p. 119.

2444. All **orders** and drafts on the treasury for money shall be signed by the mayor and shall be **countersigned** and issued by the comptroller, who shall keep an accurate record thereof in a book to be provided for that purpose.

Amended 1889, p. 142.

2445. No city of the metropolitan class shall be liable for **damages** arising from **defective streets,** alleys, sidewalks, public parks, or other public places within such city, unless actual **notice** in writing of the accident or injury complained of, with a statement of the nature and extent thereof, and of the time when and place where the same occurred, shall be proved to have been given to the mayor, or city clerk within ten (10) days after the occurrence of such accident or injury; and it is hereby made the duty of the city clerk to keep a record of such notice, showing time when and by whom such notice was given, and describing the defect complained of, to at once file such notice, and report the same to the city council at its next meeting. Any person or persons claiming to have been injured from or by reason of the cause herein indicated shall, at any time after the giving of the notice contemplated, be subject to a personal examination by the city physician, and such other physician as the city attorney may indicate (or by either thereof) for the purpose of determining the character and extent of the injuries complained of; and failure or refusal to submit to such examination shall prohibit the maintaining of any action against the city, or recovery of any damages therefrom.

Amended 1891, p. 120.

2446. Upon the second Tuesday after the election in 1887, and on the second Tuesday in January after each general city election, the **mayor,** subject to confirmation by the city council, shall **appoint** the following officers, to-wit: a city engineer, a city attorney, an assistant city attorney, a city prosecutor, a street commissioner, an inspector of buildings, a boiler inspector, and such other appointive officers as may be authorized herein or specially provided for by ordinance. It shall require a majority of all the members of the **council** to **confirm** each of said appointments. Upon the failure or **refusal** of the council to confirm any of said appointments, it shall be the duty of the mayor, on the first Tuesday of each month thereafter, to make other appointments for such offices if the appointees thereto be not confirmed, and to so continue until approved by the council.

Amended 1891, p. 120.

2447. All **officers** appointed by the mayor and confirmed by the council shall hold the office to which they may be appointed until the end of the mayor's **term** of office, and until their successors are appointed and qualified, unless sooner removed, or the ordinance creating the office shall be repealed, except as otherwise provided in section 104 [2408].

Amended 1889, p. 142.

2448. In each city of the metropolitan class there shall be a board of **fire and police commissioners,** to consist of the mayor (who shall be ex-officio chairman of said board) and four electors of said city, to be appointed by the governor. The governor shall appoint, as commissioners above, four citizens, one (1) at least from each of the three (3) political parties casting the largest number of votes for city officers at the last preceding city election, two of them **of different** political **party** faith and allegiance shall be designated in their appointment to serve for two years, and the other two, also of different political party faith, shall be designated to serve for four years. And thereafter, at the expiration of said term and each period of two years, the governor shall appoint two members of said board. For official misconduct the governor may remove any of said commissioners; and all vacancies in said board by death, resignation, or removal shall be filled by the governor for the unexpired term; and all vacancies from whatsoever cause shall be so filled that not more than two of the members of said board shall be of the same political party, or so reputed. All powers and duties connected with and incident to the appointment, removal, government, and discipline of the officers and members of the fire and police departments of the city, under such rules and regulations as may be adopted by said board, shall be vested in and exercised by the said board. A majority of said board shall constitute a quorum for the transaction of business. Before entering upon their duties each of said officers shall take and subscribe an oath to be filed with the city clerk, faithfully, impartially, honestly, and to the best of his ability, to discharge his duties as a member of said board and that in making appointments, or considering promotions or removals, he will not be guided or actuated by political motives or influences, but will consider only the interests of the city and the success and effectiveness of said departments. The board of fire and police shall have power and it shall be the duty of said board to appoint a chief of the fire department, an assistant chief of the fire department, and such other officers of the fire department as may be deemed necessary for its proper direction, management and regulation, and under such rules and regulations as may be adopted by said board. Said board may remove such officers, or any of them, whenever said board shall consider and declare such removal necessary for the proper management or discipline, or for the more effective working or service of said department. The board of fire and police shall also employ such firemen and assistants, or may authorize the chief of the fire department so to do, as may be proper and necessary for the effective service of said department, to the extent and limit that the funds provided by the mayor and council for that purpose will allow. The board of fire and police shall have power and it shall be the duty of said board to appoint a chief of police and such other officers and policemen to the extent that funds may be provided by the mayor and council to pay their salaries, as may be necessary for the proper protection and efficient police of the city and as may be necessary to protect citizens and property and maintain peace and good order. The chief of police and all other police officers and policemen shall be subject to removal by the board of fire and police, under such rules and regulations as may be adopted by said board, whenever said board shall consider and declare such removal necessary, for the proper management or discipline, or for the more effective working or service of the police department. It shall be the duty of said board of fire and police to adopt such rules and regulations for the guidance of the officers and men of said departments, and for the appointment, promotion, removal, trial, or discipline of said officers and men as said board shall consider proper and necessary. The said board of fire and police shall have such further powers and perform such other duties ,as may be authorized or defined by ordinance. Each commissioner, before entering upon the duties of his office, shall give bond in the sum of five thousand dollars ($5,000), conditioned for the faithful performance of all duties of his office, the same to be approved by the city council, and filed with the city clerk; *Provided*, That the mayor, as a member of said board, shall qualify in the same manner, shall have and exercise the same powers, privileges, and authority as the other members thereof, and receive the same compensation therefor. The tenure of his office shall be governed by provisions of the charter regulating and controlling the office of mayor. The provision as to compensation to said mayor as a member of such board shall apply only from the date of the taking effect of this act. The terms and powers of members of said board heretofore appointed by the governor of the state shall not be affected or changed by any amendments hereto.

Amended 1889, p. 142; 1891, p. 121. As to appointment by the governor, see 22, 460 (35 N. W., 228).

2449. The **chief** of police shall have the supervision and **control** of the **police force** of the city, and in that connection he shall be subject only to the orders of the mayor and the board of fire and police, and all orders of the board relating to the direction of the police force shall be given through the chief of police, or, in his absence, the officer in charge of the police force.

Amended 1891, p. 124.

2450. The **chief** of police shall be the principal **ministerial officer** of the corporation. He shall, by himself, or by deputy, **execute** and return all writs and **process** issued by the police judge; he, or one of his deputies, shall attend on the sitting of the police court, and preserve order therein; and his jurisdiction and that of his deputies in the service of process in all criminal cases, and in cases for the violation of the city ordinances, shall be co-extensive with the county.

Amended 1889, p. 145.

2451. He shall be **subject to** the orders of the **mayor** in the suppression of riots and tumultuous disturbances and breaches of the peace; he may pursue and arrest any person fleeing from justice in any part of the state, and shall forthwith bring all persons by him arrested, before the police judge for trial or examination; he may receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states.

Amended 1891, p. 124.

2452. He shall have, in the discharge of his proper duties, **like powers** and be subject to like responsiblities **as sheriff** in similar cases.

2453. The **policemen** of the city shall **have** the same **power** as **constables** in arresting all offenders against the laws of the state, and in like manner may arrest all offenders against the ordinances of the city. In the discharge of their duties as policemen they shall be subject to the immediate orders of the chief of police.

2454. The **police judge** shall have exclusive **jurisdiction** over, and it shall be his duty to hear and determine all offenses against the ordinances of the city arising within the corporate limits of the city, or within three miles of the corporate limits thereof, and of misdemeanors under the laws of the state arising within the limits of the city, when the fine which may be imposed does not exceed one hundred dollars, or the imprisonment three months; and he shall also have jurisdiction for the examination of offenders against the laws of the state for offenses arising within the city limits.

2455. The **police judge** shall be a conservator of the peace, and his **court** shall be **open** every day except Sundays, to hear and determine any and all cases cognizable before him. No act shall be performed by him on Sunday except to receive complaints, issue process, and take bail. He shall have power to enforce due obedience to all orders, rules, judgments, and decrees made by him; he shall have the same power as the district court in the issue of warrants, subpœna, or other process that may be necessary, and may fine or imprison for contempt offered to him while holding court, or to process issued by him, in the same manner and to the same extent as the district court.

2456. In all cases before the **police judge,** arising under the ordinances of the city or the laws of the state, an **appeal** may be taken by the defendant to the district court or other court of appeal, which may be provided by law in and for the city or the county in which said city is situated; but no appeal shall be allowed unless the defendant shall, within ten days, enter into recognizance with sufficient sureties, to be approved by the judge, not less than one hundred dollars ($100) in any case, conditioned for the payment of the fine and costs on appeal, if it should be determined against the appellant.

Amended 1891, p. 125.

2457. On the trial of any case in the police court, it shall be the duty of the police judge to sign any bill of exceptions tendered to the court during the progress of such trial; *Provided*, The truth of the matter be fairly stated; and thereupon, said exceptions shall be entered in the record of such trial. Any final conviction, sentence, or judgment of the police court may be examined into by the district court on writ of error, which may be allowed by such court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable; and the revising courts shall, in such proceedings, take judicial notice of all ordinances of the city, the judgment of whose police judge said court may be examining.

2458. Cases in the police court for the violation of the ordinances of the city or the laws of the state in which the police judge shall have final jurisdiction, shall be tried by the police judge without the intervention of a jury, but the right of appeal shall not be denied in any case.

Amended 1891, p. 125.

2459. If the defendant is found guilty the police judge shall declare the punishment, which, in cases arising under the ordinances of the city, shall be by fine or imprisonment, or both; and shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until the judgment be complied with, and all fines and costs are paid; and it shall be lawful to further provide as part of the judgment that until such judgment be complied with and such fines and costs are paid, that said defendant be required to work out said fine and costs, upon the public streets, or at any other place that may be provided, at the rate of two dollars ($2) per day for each day said defendant shall actually work.

2460. If, upon trial under the provisions of this act, it shall appear to the satisfaction of the police judge, or the jury, that the prosecution was commenced without probable cause or from malicious motives, the judge or jury trying the case shall state the name of the prosecutor or prosecutors in the findings, and shall impose the costs of the prosecution upon him or them, and judgment shall be rendered against such prosecutor or prosecutors that he or they pay such costs, and stand committed until the same is paid.

2461. The police judge shall have all power necessary to the performance of his duties; he shall bring parties to trial without unnecessary delay; he may, upon good cause shown, postpone the trial from time to time, and secure the presence of the defendant by recognizance or otherwise. In all cases not herein specially provided for, the process and proceedings in the police court shall be governed by the laws regulating proceedings in justice's courts in criminal cases.

2462. The police judge shall tax and collect the same fees and costs as are allowed a justice of the peace for similar services. Jurymen and witnesses shall receive the sum of one dollar ($1) for each day's attendance. In no case shall the city be liable to pay any costs or fees in cases in the police court, and all fines, fees, and costs taxed and collected by the police judge shall be paid into the city treasury at the end of each month, accompanied by a full and accurate statement of all fines, fees, and costs taxed and collected or taxed and uncollected. All witness fees remaining unclaimed for ninety days after the same shall have been collected by the police judge shall be forfeited to the city, and shall be paid to the city treasurer by the police judge, who shall report at the end of each month to the city council all witness fees collected by him and in his possession. The police judge shall be liable upon his official bond for the prompt payment, as required by this act, of all fines, fees, and costs to said city.

2463. In case of **vacancy** in the office of police judge by death, resignation, or otherwise, or in case of his absence, disability, or inability to perform his duty, it shall be the duty of any acting justice of the peace within the city, who shall be designated by the mayor in writing, to act as police judge during such vacancy, absence, or inability, in the trial of causes cognizable before the said judge.

2464. The police judge shall **remit** no **fine** or costs in any case. The mayor and council may provide by ordinance the manner and terms on which the mayor may remit any fine, penalty, or costs imposed by the police judge for offenses arising under the ordinances of the city.

2465. When by this act the **power** is conferred upon the mayor and council to do and perform any act or thing, and the manner of exercising such power is not specially pointed out, the mayor and council may provide by ordinance the details **necessary** for the full exercise of such power.

2466. The **duties,** powers, and privileges of all **officers** of every character, in any way connected with the city government not herein **defined,** shall be defined by **ordinance,** and the defining by this act of the duties of any city officer shall not preclude the mayor and council from defining by ordinance further and additional duties to be performed by any such officer. Every officer of the city, before entering upon his official duties, shall take and subscribe an oath faithfully to discharge the duties of his office, which oath shall be in writing and shall be filed with the city clerk.

2467. In any and all suits at law or in **equity** that may be brought against any city of the metropolitan class, if the said **city** shall **refuse** or neglect **to defend** the same, any resident **taxpayer may,** in behalf of said city, defend said suit at the cost of the said city, not including attorney's fees.

2468. Lands, houses, moneys, debts due the **city,** and **property** and assets of every description belonging to any city governed by this act shall be **exempted from taxation,** execution, and sale. Judgments against such city shall be paid out of the general fund, or, if the council so determine, by a tax to be levied at the time of the annual levy on all the taxable property within the city limits.

2469. All **fines** and penalties and forfeitures collected for offenses against the ordinances of the city, or for misdemeanors against the laws of this state, committed within any city of the metropolitan class shall, unless otherwise provided by law, be **paid** by the person receiving the same **to** the **city treasurer** of said city; and any person receiving such fine, penalties, or forfeitures, who shall fail to pay the same over as above provided, within thirty (30) days after the receipt of the same by him, or within ten (10) days after being requested by the mayor so to do, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not to exceed one thousand dollars ($1,000), and imprisonment not to exceed six (6) months in the county jail.

2470. The several **officers** hereinafter named of any city of the metropolitan class shall receive the following **compensation,** and no more directly or indirectly, to-wit: 1st. The mayor shall receive the sum of twenty-five hundred dollars ($2500) per annum for services as mayor, and as member of the board of fire and police commission the same compensation as other members of such board. 2d. The police judge shall receive a salary of twenty-five hundred dollars ($2500) per annum.

3d. The treasurer shall receive a salary of six thousand dollars ($6,000) per annum. 4th. The comptroller shall receive the sum of twenty-five hundred dollars ($2500) per annum. 5th. The chief of police shall receive the sum of two thousand dollars ($2,000) per annum. 6th. The city clerk shall receive the sum of two thousand dollars ($2,000) per annum. 7th. The city attorney shall receive the sum of three thousand dollars ($3,000) per annum. 8th. The assistant city attorney shall receive the sum of two thousand dollars ($2,000) per annum. 9th. The city prosecutor shall receive a salary of fifteen hundred dollars ($1500) per annum. 10th. The city engineer shall receive the sum of three thousand dollars ($3,000) per annum. 11th. The assistant city engineer shall receive the sum of two thousand dollars ($2,000) per annum. 12th. The chairman of the board of public works shall receive the sum of twenty-five hundred dollars ($2500) per annum. 13th. The inspector of buildings shall receive the sum of twenty hundred dollars ($2000) per annum. 14th. The commissioner of health shall receive a salary of two thousand dollars ($2000) per annum. 15th. The boiler inspector shall receive the sum of fifteen hundred dollars ($1500) per annum. 16th. The commissioner of fire and police shall each receive a salary of six hundred dollars ($600) per annum, and no more either directly or indirectly. 17th. The chairman of the board of park commissioners shall receive a salary of six hundred dollars ($600) per annum, and the other members of said board the sum of two hundred dollars ($200) each per annum. 18th. Each policeman shall receive a sum not exceeding eighty-five dollars ($85) per month, and each officer of police, under rank of chief, shall receive a sum not exceeding one hundred dollars ($100) per month, to be fixed by the board of fire and police commissioners. No policeman shall be allowed fees as a witness in any case tried in the police court. 19th. Each councilman shall receive the sum of eight hundred dollars ($800) per annum.

Amended 1889, p. 146; 1891, p. 126.

2471. The **compensation** or salary **of** all **officers** and agents of the city **not** herein **specified** shall be fixed and determined by ordinance, and shall not be increased or diminished during the term for which such officer or agent shall be appointed.

2472. **No** officer shall directly or indirectly be allowed any **further** or greater **compensation** for his official services than is allowed herein, nor shall any officer named herein take or receive therefor, directly or indirectly, any further or greater compensation than is provided as aforesaid.

2473. If any such **officer** shall **violate** any of the foregoing provisions of this act, or if any member of the council shall vote for any further allowance to any officer whose salary is fixed by this act, or to the members of the council, he shall be deemed guilty of a **misdemeanor** in office, and upon conviction thereof in a court of competent jurisdiction shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding one year; and he shall moreover be removed from office by the court rendering judgment of conviction against him.

2474. Any **officer** of the city, or member of the city council, or any employee entrusted with the supervision of any public work, who shall, by himself or agent, or as the agent or representative of any other person or corporation, become a party to, or in any way **interested in** any **contract**, work, or letting under the authority and by the action of the city council, or who shall in any manner be pecuniarily interested in, or receive any portion of the wages or pay of any person or team in his charge, or under his supervision or control, or furnish any material to be used in such work or under such contract, or who shall accept or receive any valuable consideration or promise for his influence or vote, shall be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not exceeding six months, or both, in the discretion of the court.

2475. The **power to remove** from his office the mayor, or any councilman, or other officer mentioned in this act, in any city of the metropolitan class, for good and sufficient cause, is hereby conferred upon the district court for the county in which such city is situated; and whenever any two of the city councilmen shall make and file with the clerk of said court the proper charges and specifications against the mayor, alleging and showing that he is guilty of malfeasance or misfeasance as such officer, or that he is incompetent or neglects any of his duties as mayor, or that for any other good and sufficient cause stated he should be removed from his office as mayor; or whenever the mayor shall make and file with the clerk of said court the proper charges and specifications against any councilman or other officer mentioned in this act, alleging and showing that he is guilty of malfeasance or misfeasance in such office, or that he is incompetent, or neglects any of his duties, or that for any other good and sufficient cause stated he should be removed from his office, the judge of such court may issue the proper writ requiring such officer to appear before him, on a day therein named, not more than ten days after the service of such writ, together with a copy of such charges and specifications upon such officer, to show cause why he should not be removed from his office. The proceedings in such case shall take precedence of all civil causes and be conducted according to the rules of such court in such cases made and provided, and such officer may be suspended from the duties of his office during the pendency of such proceedings by order of said court.

2476. That an **act** entitled "An act to incorporate cities of the first class, and regulating their duties, powers, and government," approved March 1st, 1881, and all acts amendatory thereof, and all acts, or parts of acts, or laws in conflict herewith, be and the same are hereby **repealed.**

Sec. 2477. An act to provide for the sale of unclaimed personal property in the custody of chief of police or police judge in cities of the metropolitan class. 1889, p. 349. In force March 30.

2477. That all personal **property** which may now be, or which may hereafter come into the possession or custody of the chief of police, or of the police judge, in cities of the metropolitan class, and which shall remain **unclaimed** for the period of six (6) months after the passage of this act, or which may remain unclaimed for the period of six (6) months after such property may hereafter come into the possession and custody of such chief of police or such police judge, shall be **sold** by the chief of police of such city at public auction after giving thirty (30) days' notice thereof, by advertisement published three consecutive days in the official newspaper of such city.

Secs. 2478 to 2482. "An act to provide for the setting apart, formation, and disbursement of a police relief fund in cities of the metropolitan class." 1889, p. 345. In force March 30.

2478. The **board of** fire and police commissioners in any city, considered and known as a city of the metropolitan class, is hereby authorized to **create** a police relief **fund by assessing** upon each member of the police force a sum to be deducted from the monthly pay of each member, not exceeding one per centum thereof, and the sum so fixed and deducted shall be paid into the city treasury to the credit of the police relief fund, and shall be used exclusively to relieve members of the force when sick or disabled from the performance of duty, for funeral expenses, relief of their families in case of death, or for pensions when honorably retired from the force.

2479. (First) All **moneys** received from fines imposed upon members of the police force of such city for violation of the rules and regulations of the police department; (second) one-fourth of all rewards given or paid to members of the police force of such city, except such as shall be excepted by said board, and (third) all moneys arising from the sale of unclaimed property or money, after deducting all expenses incident thereto, shall be paid into the city treasury to the credit of the police relief fund, and the fire and police commissioners shall be **trustees** of the fund and shall **invest** the same from time to time, when there is a surplus, in United States bonds, bonds of the state of Nebraska, bonds of such city, or bonds of the county in which such city is located; *Provided, however,* That it shall be the duty of said city treasurer to deposit and keep at interest so much of said police fund as may not be invested as aforesaid, in such bank in such city as may be designated by the board of directors of the police relief fund, hereinafter mentioned, and approved by the board of fire and police commissioners.

2480. The members of the police force of the city shall make such rules and regulations as to the **disbursement of** the police relief **fund** to the members as they may deem proper, such rules and regulations to be approved by the board of fire and police commissioners. And the members of the police force, each having one vote, shall elect annually, on the first Wednesday after the first day of April in each year, a board of seven members from their own number, to be known as the **board of directors** of the police relief fund, to whom shall be entrusted the entire management of the fund and its disbursements, subject to the approval of the board of fire and police commissioners as herein provided.

2481. The **board** of directors shall organize, electing a president and secretary, and no **payment of** any **money** shall be made from the relief fund, save for investment by the trustees, except upon the order of the board of directors, signed by the president, countersigned by the secretary, and approved by the board of fire and police commissioners. Members who have resigned, or have been dismissed from the force, shall have no interest in or claim on such fund, and members who are honorably retired from the force shall have only such interest in the fund as may be fixed in the rules and regulations in relation to the fund by the board of directors, and approved by the board of fire and police commissioners.

2482. When a **patrolman** or any officer of a higher grade on the active force becomes bodily **disabled** in consequence of and while in the performance of official duty, he may continue to draw his regular salary, at the discretion of the board of fire and police commissioners, for a period not to exceed three months. If such disability, incurred in consequence of and while in performance of official duty, shall appear to be of such a character as to permanently unfit such member of active duty upon the police force, he shall, upon the recommendation of the mayor and approval of the board of fire and police commissioners, be retired and shall be allowed out of the police relief fund a pension of ten dollars ($10) per month, to be paid monthly. But if any member of the force, on recovery from such disability, be assigned to duty and full pay, his pension shall cease. Patrolmen and officers of a higher grade, who have done faithful service, and have been disabled so as to unfit them for serving for patrolman or as such officers, may be assigned to other duties suitable to their physical abilities, and shall always have preference in such assignments. When such member of the force, in consequence of such partial disability, has been assigned to any position having a rate of compensation lower than the one to which such member was entitled, previous to his disability, such assignment shall not exclude him from receiving a pension or terminate the pension which may have been awarded him. The pension herein provided for shall be aside from and in addition to any allowance which may come from the police relief fund provided for above. Any **patrolman** or officer of a higher grade who has served faithfully for a period of fifteen years, from and after the passage of this act, and who has reached the age of fifty years may, on **retirement** from active service, on the recommendation of the mayor and the approval of the board of fire and police commissioners, be allowed a pension of ten dollars ($10) per month, to be paid as provided above for pensions on account of disability.

II. CITIES OF FIRST CLASS.

A. 25,000 TO 100,000.

Secs. 2483 to 2595. "An act to incorporate cities of the first class and regulating their duties, powers, government, and remedies." 1889, p. 151. In force March 29. As amended by the act of 1891, p. 129. (Act of 1889 repeals act of 1887, p. 202.)

2483. **Population.**—That all cities having less than one hundred thousand (100,000) inhabitants and more than twenty-five thousand inhabitants shall be governed by the provisions of this act, and be known as cities of the first class.

2484. **Population.**—Whenever a city of the second class shall have attained a population of more than twenty-five thousand (25,000) inhabitants and such fact shall have been duly certified to the governor by the mayor of such city, attested by the seal thereof, he shall declare by public proclamation such city to be a city of the first class and subject to the provisions of this act.

2485. **How organized.**—The government of such city shall continue in authority from the date of such proclamation until the reorganization under this act. The mayor and council shall divide the city into not less than six different wards, to take effect at the next annual municipal election.

2486. **Corporate limits.**—The corporate limits of such city shall remain as theretofore, and the mayor and council may by ordinance include therein all the territory contiguous or adjacent, which has been by the act, authority, or acquiescense of the owners subdivided into parcels containing not more than twenty acres, and the mayor and council shall have power, by ordinance, to compel the owners of land so brought within the corporate limits to lay out streets, ways, and alleys to conform and be contiguous with the streets, ways, and alleys of such city (or otherwise as shall appear most for the convenience of the inhabitants of such city and the public), and they may vacate any public road heretofore established through such land when necessary to secure regularity in the general system of its public ways.

2487. **Contiguous property.**—Land shall be deemed contiguous to such city notwithstanding any stream or embankment, or any strip or parcel of land not more than two hundred (200) feet in width may lie between such land and the corporate limits of such city.

2488. **Additions.**—The proprietor or proprietors of any land within the corporate limits of any city of the first class, or contiguous to the same, may lay out said lands into lots, blocks, streets, avenues, and alleys, and other grounds under the name of —— addition to the city of —— and shall cause an accurate map or plat thereof to be made out designating explicitly the lands so laid out, and particularly describing the lots, blocks, streets, avenues, and alleys, and grounds belonging to such addition; the lots must be designated by numbers and the streets, avenues, and other grounds by name or numbers, and such plat shall be acknowledged before some officer authorized to take the acknowledgment of deeds and have appended a certificate made by some competent surveyor, that he has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked, and when such map or plat is so made out, acknowledged, and certified, and after being approved by the mayor and council, the same shall be filed and recorded in the office of the county clerk of the county, and thereupon such plat shall be equivalent to a deed in fee simple to said city from the proprietor of all streets, avenues, alleys, public squares, parks, and commons, and of such portion of the land as is therein set apart for public and city use, or is dedicated to charitable, religious, or educational purposes, and all additions thus laid out shall remain a part of said city, and all additions now or hereafter laid out adjoining or contiguous to the said corporate limits shall be included in the same, and be and become thereupon a part of such city for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges, and subject to all the laws, ordinances, rules, and regulations of the city to which said land is an addition; *Provided*, The mayor and council shall have power by ordinance to compel the owners of any such addition to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction, and be continuations of the streets, ways, and alleys in the city or additions thereto, contiguous to or near the proposed addition, and no addition shall have any validity, right or privilege as an addition unless the terms and conditions of such ordinance are complied with, and the plats thereof submitted to and approved by the mayor and council, and such approval endorsed thereon.

2489. **Corporate name.**—The corporate name of each city organized under or governed by this act shall be the city of —— and all process whatever affecting any such city shall be served upon the mayor or acting mayor, or in the absence of both of said officers from the city, then upon the city clerk.

2490. **Rights reserved.**—No right of property accrued to any city, corporation, or person under any law heretofore in force shall be affected by this act, and all city ordinances now in force and not repugnant to the provisions of this act shall remain and continue in force until altered or repealed by the mayor and council. When any such city or town shall be incorporated under the provisions of this act, all its said trusts, rights, and privileges shall be transmitted to and vested in such latter corporation, and all actions heretofore commenced by or against any city, or town which shall become a city, governed under the provisions of this act, shall be in no manner affected by this act, but all such actions shall be continued to final judgment and satisfaction as if this act had not been passed.

2491. **Powers.**—Each city governed by the provisions of this act shall be a body corporate and politic, and shall have powers: *First*—To sue and be sued. *Second.*—To purchase and hold real and personal property for the use of the city, and real estate sold for taxes. *Third.*—To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interests of the city. *Fourth.*—To make all contracts and to do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate powers. *Fifth.*—To exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and council of such city as hereinafter set forth, but they shall not have power to sell any real estate of the city unless authorized to do so by a vote of the majority of the electors of such city at a special election therefor.

2192. Each city governed by this act shall be divided into not less than six **wards** as compact in form and equal in population as may be, and no ward shall contain less than six thousand (6,000) inhabitants, the boundaries of which shall be defined by ordinance. Each ward shall constitute an election district; *Provided*, That when any ward shall contain over five hundred (500) legal voters, the mayor and council may divide such ward into two or more election districts.

Amended 1891, p. 161.

2493. **Precinct lines.**—Precinct lines in that part of any county not under township organization, embraced within the corporate limits of any city governed by this act, shall correspond with the ward lines in such city, and such precinct shall correspond in number with the ward of the city, and be co-extensive with the same; *Provided*, That when a ward is divided into election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election district; *And provided further*, That no justices of the peace or constable shall be elected in such precinct, and every such city shall constitute a district for the election of justices of the peace and constables *and in every such district there shall be elected two justices of the peace and two constables at the time provided by law for the election of such officers in other districts.

All after * repealed by implication by act of 1889, p. 362, providing for three justices. **28**, 626 (44 N. W., 874).

2494. The **general** city **election** in all cities governed by this act shall be held on the first Tuesday in April, annually. The polls shall be open at such place in each election district as may be designated by the mayor to be fixed by ordinance, and shall be kept open between the hours of eight o'clock A. M. and seven o'clock P. M., and no longer.

Amended 1891, p. 129.

2495. [**Officers elected.**] At the first annual election after such proclamation by the governor, a mayor, treasurer, clerk, water commissioner, city attorney, city engineer, and police judge shall be elected by a plurality of votes for the term of two years, and biennially thereafter. In cities governed by the provisions of this act each ward shall elect from its residents two (2) councilmen for the term of one and two years respectively, and one annually thereafter, for two years. In cities of this class now or hereafter subject to the provisions of this act, whenever, by reason of an increase in wards in such city, any ward should be without representation, it shall be lawful and proper at the next succeeding election to elect two councilmen in each of such wards for the term of one and two years respectively, and one councilman annually thereafter for two years. Officers whose terms are unexpired shall hold their offices for their unexpired terms, and elections shall be made as vacancies occur. There shall also be in each city, governed by this act, an excise and police board, consisting of the mayor, who shall be ex-officio member and the chairman thereof, and two members elected by the city at large, who shall hold their offices for two years. The terms of all elective officers shall commence on the Tuesday next after their election and continue until their successors are elected and qualified. Each councilman hereafter elected in any such city, before entering upon the duties of his office, shall be required to give a bond to said city in the sum of two thousand dollars ($2,000), with two or more good and sufficient sureties, residents of said city, who shall each justify that he is worth at least two thousand dollars ($2,000) over and above all debts, liabilities, and exemptions, conditioned for the faithful discharge of the duties of the councilman giving the same, and further conditioned that if said councilman shall vote for any expenditure of money, or the creation of any liability in excess of the amount allowed by law, or shall vote for the transfer of any sum of money from one fund to another where such transfer is not allowed by law, that such councilman and the sureties signing said bond shall be liable thereon.

Amended 1891, p. 129. See **29**, 205 (45 N. W., 279)..

2496. Chief of the fire department, and the inspector of meats and live stock, building inspector, who shall be a person of practical experience in the erection and construction of buildings, and such other **offices** as may be provided for by this

act except the marshal and police, and **not elective**, may be appointed by the mayor, by and with the assent of the council. Any of such officers may be removed at any time by a vote of three-fourths of all the members of the council. All confirmation of officers of the council shall be made *viva voce*, and the concurrence of a majority shall be required, and the vote by yeas and nays shall be recorded. The city marshal and such number of police as the excise and police board may authorize, shall be appointed and may be removed by the excise board as hereinafter provided; and in case of emergency, the mayor may appoint a necessary number of special police, who shall be removable at the pleasure of the mayor.
Amended 1891, p. 131.

2497. **Electors—Qualification.**—The qualification of the electors in the several wards shall be the same as is required for the electors under the laws of the state, and they shall also have resided in the city three months and in the ward seven days. At a meeting of the council on the first Monday after any city election, the returns shall be **canvassed**, and they shall cause the clerk to make out and deliver certificates of election to the persons found to be elected, and a neglect of such officer to qualify within ten days after the delivery to him of such certificate shall be deemed a refusal to accept the office to which he may have been elected.

2498. **Council meetings.**—Regular meetings of the council shall be held at such times as may be fixed by ordinance and special meetings whenever called by the mayor or any four councilmen. Two-thirds of all the members elected to the council shall constitute a quorum for the transaction of any business, but a less number may adjourn from time to time, and compel the attendance of absent members.

2499. The **salaries** of all officers shall be fixed by ordinance, not exceeding the following sums per year, respectively: The mayor, one thousand dollars ($1,000) per annum; treasurer, three thousand dollars ($3,000) per annum; deputy treasurer, twelve hundred dollars ($1200) per annum; one assistant, nine hundred dollars ($900) per annum; each councilman, and member of the excise board, except the mayor, three hundred dollars ($300) per annum; clerk, two thousand dollars ($2,000) per annum, including the making of the tax list; deputy city clerk, twelve hundred dollars ($1200) per annum; marshal, one hundred dollars ($100); captain of police, ninety dollars ($90), and policemen, seventy dollars ($70) each per month; city engineer, eighteen hundred dollars ($1800) per annum; street commissioner, seventy-five dollars ($75) per month; city attorney, fifteen hundred dollars ($1500) per annum; deputy city attorney, nine hundred dollars ($900) per annum; water commissioner, one thousand dollars ($1,000) per annum; inspector of meats and live stock, seventy dollars ($70) per month; chairman of the board of public works, twelve hundred dollars ($1200) per annum, and the other two members of said board, two hundred dollars ($200) per annum. The foregoing to be construed as limitations and not fixed salaries. All other officers and employees of the city, except police judge, shall receive such compensation as the mayor and councilmen shall fix by ordinance at the time of their employment; *Providing, however*, That if any officer absent himself from the city for the period of sixty days or more he shall forfeit his salary during such absence, and if absent for ninety days his office may be declared vacant by the mayor and three-fourths of all the members of the council. The emoluments of no officer, whose election or appointment is required by this act, shall be increased or diminished during the term for which he was elected or appointed, and no person who shall have resigned or vacated any office, shall be elegible to the same or any appointive office during the time for which he was elected or appointed. No one shall be appointed as an inspector, or other public officer, who has not been qualified by practical experience in the particular line of industry that requires his attention and constitutes the duties of his office.

Amended 1891, p. 131.

2500. **Police judge.**—The compensation of the police judge shall be fifteen hundred dollars ($1500) per annum, to be retained out of the fees collected by him, for his services; *Provided*, This shall not include any sums he may receive for his services as an examining magistrate, and in cases under the statutes. He shall keep in a suitable book, to be provided by the city, an accurate account of all fees and costs by him collected in cases for violation of city ordinances.

2501. **Officers—Who qualified.**—All officers shall be qualified electors of the city, entitled to vote at all elections therein.

2502. **Mayor's powers and duties.**—The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, except as is otherwise herein provided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and the provisions of this act are complied with, and may administer oaths, and shall sign the commissions and appointments of all the officers appointed in the city.

Presumption that mayor is present. 23, 382 (36 N. W., 554).

2503. **Same—Veto.**—The mayor shall have the power to sign or veto any ordinance passed by the city council, and to sign or veto any order, by-law, resolution, award of, or vote to enter into any contract, or the allowance of any claim; *Provided*, That any ordinance, order, by-law, resolution, award, or vote to enter into any contract, or the allowance of any claim, vetoed by the mayor, may be passed over his veto by a vote of two-thirds of all the members elected to the council, notwithstanding his veto, and should the mayor neglect or refuse to sign any ordinance or resolution, and return the same with his objection in writing, at the next regular meeting of the council, the same shall become a law without his signature; *Provided*, That the mayor may veto any item or items of any appropriation bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the council over his veto as in other cases.

2504. **Message.**—He shall, from time to time, communicate to the city council such information and recommend such measures as, in his opinion, may tend to the improvement of the finances of the city, the police, health, comfort, and general prosperity of the city, and shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of health or quarantine ordinance, and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation within one-half mile of the corporate limits of said city.

2505. **Vacancy.**—In case of any vacancy in the office of mayor, or in case of his absence or disability, the president of the council shall exercise the powers and duties of the office of mayor until such vacancy shall be filled or such disability removed, or in case of temporary absence, until the mayor returns, and perform such other duties as may be required by law. The mayor may require any male inhabitant of the city, between the ages of eighteen and fifty, to aid in enforcing the laws.

2506. **May remit fines.**—The mayor shall have power, after conviction, to remit fines and forfeitures and to grant reprieves and pardons for all offenses under the ordinances of the city.

2507. The **city clerk** shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council; he shall also keep a record of all outstanding bonds against the city, showing the number and amount of each, for what and to whom the said bonds were issued, and when any bonds were purchased, paid, or canceled, said record shall show the fact, and in his annual report shall describe particularly the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof; he shall also perform such other duties as may be required by the ordinances of the city. He shall also make, at the end of each month, a report showing the amount appropriated to each fund and the whole amount of warrants drawn thereon, which shall be spread at large upon the minutes. And said clerk may, in case the council deem such assistance necessary, appoint a **deputy,** who shall give a bond as required of his principal, and whose salary shall not exceed the sum of nine hundred ($900) dollars per annum.

Amended 1891, p. 133.

2508. The **treasurer** shall be required to give bonds in not less than three hundred thousand dollars ($300,000), or he may be required to give bond in double the sum of money estimated by the council to be at any time in his hands belonging to the city and school districts, and he shall be custodian of all moneys belonging to the corporation; he shall keep a separate account of each fund or appropriation and the debits and credits belonging thereto; he shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid; he shall also file copies of receipts with his monthly reports; he shall, at the end of each and every month, and as often as may be required, render an account to the city council, under oath, showing the state of the treasury at the date of each account, the amount of money remaining in such fund, and the amount paid therefrom, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all the receipts and disbursements, together with all warrants redeemed and paid by him, which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office, and if said treasurer neglect or fail, for the space of thirty days from the end of any month, to render his said account, his office may, by resolution of the mayor and council, be declared vacant, and the city council shall fill the vacancy by appointment until the next election for city officers. The treasurer may employ and appoint a **deputy,** who shall be allowed a salary of not more than twelve hundred dollars ($1200) per annum, and an assistant at not more than nine hundred dollars ($900) per annum, to be fixed by the council at the time of his employment, and the treasurer shall be liable upon his bond for the acts of his deputy.

Amended 1891, p. 133.

2509. The **city attorney** shall be the legal adviser of the council and city officers; he shall commence, prosecute, and defend suits and actions commenced, prosecuted or defended on behalf of the corporation, shall attend all the meetings of the council, and give them his opinion upon any matter submitted to him, either orally or in writing, as may be required; *Provided*, That he shall not be required to prosecute complaints for offenses against the city ordinances in police court, except on the request of the mayor, council, or police judge; *And provided further*, That in case any citizen or citizens shall be of opinion that any civil liability, arising out of contract or otherwise, exists in behalf of the city against any person, persons, or incorporation, he or they may demand of the city attorney that he begin and prosecute an action against such person, persons, or incorporation in the name of said city, for the enforcement of such liability or the recovery of any amount or property to which the city may in his or their opinion be entitled by reason thereof, and if the said city attorney shall refuse to begin and prosecute such action, or shall neglect so to do for the term of one week after such demand, it shall be lawful for the citizen or citizens making such demand, to begin and prosecute such action in the name and upon the behalf and for the benefit of said city, upon filing, with the petition therein, an undertaking with one or more sureties, approved by the clerk of the court in which the action is brought, conditional for the payment of all the costs that may be incurred in said action, if the same shall be unsuccessful. But the city shall not in any event be liable or responsible for attorneys' or counsel fees incurred in the prosecution of any such action, and it shall be lawful for any citizen or citizens at their own expense and charge to associate any attorney or attorneys with the city attorney in the prosecution or defense of any action to which said city may be a party.

Amended 1891, p. 135.

2510. **Engineer—Duties of.**—The city engineer shall make a record of the minutes of his surveys and of all work done for the city, including sewers and extensions of water system, and accurately make such plats, sections, profiles, maps, plans, details, and specifications as may be necessary in the prosecution of any public work, which shall be public records and belong to the city, and be turned over to his successor.

2511. **Same.**—The city engineer shall make estimate of the cost of labor and materials which may be done or furnished by contract with the city, and make all surveys, estimates and calculations necessary to be made for the establishment of grades, building of culverts, sewers, water-works, bridges, curbings and gutters, and the improvement of streets and erection and repair of buildings, and shall perform such other duties as the council may require. Before the city council shall make any contract for building water-works, or any part thereof, or any sewers, bridges, or work on the streets, or any other work or improvement to cost over two hundred dollars ($200), an estimate of the total cost thereof, together with detailed plans and specifications thereof, shall be made by the city engineer and submitted to the council, and if approved by the council such plans and specifications shall be returned to the city engineer and kept by him subject to public inspection, and the work and improvement shall be done substantially in accordance therewith, and no contract shall be entered into for any work or improvement for a price exceeding such estimate, and in advertising for bids for any such work, the council shall cause the amount of such estimate to be published therewith. Such advertisements shall be at least ten day in some daily newspaper of general circulation, published in the city; *Provided,* That in case any such work or improvement is to be paid for by special tax or assessment, no contract shall be entered into until such work or improvement shall have been requested in writing by, and the plans and specifications thereof shall have been approved by the owners of a majority of the real estate proposed to be assessed with the cost thereof, and no material change shall be made in such plans and specifications, nor any change or changes which shall increase the cost of such work above said estimate, except with the consent of a majority of the owners of real estate to be taxed therefor expressed in writing. Such majority to be estimated according to front foot or aquare foot as the council may determine.

See **29**, 153 (45 N. W., 245).

2512. **Marshal—Duties of.**—The marshal shall have the immediate superintendence of the police, and the marshal and policemen shall have power, and it shall be their duty to arrest all offenders against the laws of the state or of the city, by day or by night, in the same manner as a sheriff or constable, and to keep them in the city prison, or other place, to prevent their escape until a trial or examination may be had before a proper officer, and shall have the same powers as sheriffs and constables in relation to all criminal matters, and all process issued by the police judge.

2513. **Street commissioner.**—The street commissioner shall, subject to the orders of the mayor and council, have general charge, direction, and control of all work in the streets, sidewalks, culverts, and bridges of the city, except matters in charge of the board of public works, and shall perform such other duties as the council may require.

2514. **Accounts of officers.**—The mayor or council shall have power when he or they deem it necessary, to require any officer of the city to exhibit his accounts, or other papers, and to make reports to the council in writing, touching any subject or matter they may require pertaining to his office.

2515. **Contract—Resolution.**—On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract by the mayor, or council, the yeas and nays shall be called and recorded, and to pass or adopt any by-laws, ordinance, or any such resolution, or order, a concurrence of a majority of the whole number of members elected to the council shall be required.

2516. **Streets—Care of.**—The mayor and council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the city, and shall cause the same to be kept open and in repair and free from nuisances.

2517. **Markets.**—The mayor and council shall have full power to prevent forestalling, to prohibit or regulate huckstering in the market, to prescribe the kind and description of articles which may be sold and the stand or places to be occupied by vendors, and may authorize the immediate seizure and arrest or removal from the markets of any persons violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions. Nothing in this act contained shall be so construed as to authorize the council to pass an ordinance for the purpose of assessing any tax, assessment, fine, or punishment upon any farmer or producer for selling at any time within the city any article of provision or vegetables grown or produced by him.

2518. **Claims.**—All claims against the city must be presented in writing with a full account of the items, verified by the oath of the claimant or his agent, that the same is correct, reasonable, and just, and no claim shall be audited or allowed unless presented or verified as provided for in this section, and read in open council. The vote of each councilman upon the allowance of any claim shall be entered upon the minutes; *Provided*, That no claim arising either on contract or tort exceeding the sum of twenty-five dollars shall be allowed until the same shall have been read in open council and the name of the claimant and the amount and nature of the claim published once in a daily newspaper published and of general circulation in said city. Not more than five words shall be used in stating the nature of any such claim. Any taxpayer in such city or the claimant may, after the allowance of any claim required by this section to be published, appeal therefrom to the district court of the county in which such city is situated by giving notice of such appeal to the city clerk within two days after the allowance of the same, and filing, within ten days after such allowance, a bond or obligation in favor of said city with the clerk thereof, and with good and sufficient sureties, to be approved by said clerk, conditioned that said appellant shall prosecute said appeal to effect and without any unnecessary delay, and pay all costs that may be adjudged against said appellant; and in an appeal by a taxpayer, in case the claimant finally recovers judgment for as much or a greater sum, exclusive of interest, as allowed by the council, such appellant shall pay all costs made by such appellate proceedings; and in an appeal by a claimant, in case such claimant does not recover of said city as large a sum, exclusive of interest, as allowed by such council, said claimant shall pay all costs made by said appeal. The procedure of such appeal shall be in all respects as near as may be like the procedure on appeal from the county board to the district court. In case of appeal no warrant shall issue for the payment of any claim until said appeal is finally determined. And to maintain an action against said city for any unliquidated claim it shall be necessary that the party file in the office of the city clerk, within three months from the time such right of action accrued, a statement giving full name and the time, place, nature, circumstance, and cause of the injury or damage complained of. No appeal bond shall be required of the city by any court in any case of appeal by said city.

See **29,** 153 (45 N. W., 245).

2519. **Public money—Diversion.**—Each and every fund created by this act shall be strictly devoted to the purpose for which it was created, and shall not be diverted therefrom, and any member of the city council voting to so divert the money in any fund shall be liable to a suit for damages for the amount of funds so diverted; *Provided*, That any surplus remaining in any fund after all obligations against the same shall have been satisfied, and which surplus is no longer required for the purpose for which such fund was created, may be transferred to any other fund by order of the council.

2520. **Same—Special funds.**—All moneys received in any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made; and such money shall be used for no other purpose whatever; *Provided*, That any surplus remaining in any fund after all obligations against the same shall have been satisfied, may be transferred to any other fund by order of the council.

2521. **Fiscal year.**—The fiscal year of each city shall commence on the first Monday in September.

2522. **Appropriation bill—Annual.**—The city council shall, within the last quarter of each fiscal year, pass an ordidance to be termed the "Annual Appropriation Bill," in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporations, not exceeding in the aggregate the amount of tax authorized to be levied during the then ensuing year; and in such ordinance shall specify the object and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriation shall be made at any other time within such fiscal year, unless the proposition to make such appropriation has been sanctioned by a majority of the legal voters of such city, either by a petition signed by them, or at a general or special election duly called therefor; and all appropriations shall end with the fiscal year for which they were made; *Provided*, That the fund arising from road taxes and "bridge taxes," as in this chapter provided, shall be deemed especially appropriated, and shall not be included in the annual appropriation ordinance; *And provided further*, That nothing herein shall be construed to prohibit the council from appropriating other money in the annual appropriation bill for the use of streets, grades, and bridges.

See **29,** 153 (45 N. W., 245).

2523. **Same—Estimates.**—Before such annual appropriation bill shall be passed, the council shall prepare an estimate of the probable money necessary for all purposes to be raised in said city during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the different objects and branches of expenditures as near as may be, with a statement of the entire revenue of the city for the previous fiscal year, and shall enter the same at large upon its minutes, and cause the same to be published for one week in some daily newspaper published and of general circulation in the city.

2524. The mayor and council shall have **no** power to appropriate, issue, or draw any order or **warrant** on the treasurer for money **unless** the same shall have been appropriated or ordered **by ordinance**, or the claim, for the payment of which such order or warrant is issued, has been allowed according to the provisions of this chapter, and appropriations for the class or object out of which such claim is payable, has been made as provided in section forty-one (41) [2523]. Neither the city council nor any department or officer of the corporation shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill for that year, except as herein otherwise specially provided. And no expenditure for any improvement to be paid for out of the general fund of the corporation, shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill; *Provided*, *however*, That nothing herein contained shall prevent the city council from ordering, by a unanimous vote of all the members elect, any apparatus or machinery, the necessity of which is caused by any casualty, accident or emergency happening after such annual appropriation is made, or, by a like vote, from making necessary appropriations for quarantine or hospital purposes in case of outbreak of a virulent epidemic or contagious disease. The city council may, by a like vote, order the mayor to borrow a sufficient sum to provide for the expense necessary to be incurred in making any such repairs, or restoration of improvements, or purchase of apparatus or machinery, the necessity of which has arisen, as is last above mentioned, or to pay the city employees or laborers for a space of time not exceeding the close of the next fiscal year, which sum and the interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein.

Amended 1891, p. 137.

2525. **Appropriations.**—All ordinances and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council. Ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless two-thirds of the council shall dispense with the rule. No ordinance shall contain any subject which shall not be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

2526. **Warrants.**—Upon allowance of claims by the council the order for the payment shall specify the particular fund or appropriation out of which they are payable, as specified in the annual appropriation bill passed in the manner hereinbefore provided, and no order or warrant shall be drawn in excess of ninety per centum of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment, excepting as to funds raised by special assessment for public improvements. All warrants drawn upon the treasurer must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable, and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn; each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn and the amount already expended of such fund.

2527. **Power to contract.**—No contract shall hereafter be made by the city council, or any committee or member thereof, and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

2528. **No officer** of any city shall be **interested,** directly or indirectly, **in any contract** to which the corporation, or any one for its benefit, is a party; and such interest in any such contract shall avoid the obligation thereof on the part of said corporation. Nor shall any officer of the city be interested, directly or indirectly, in any contract to perform any work for, or furnish any material to, any contractor or subcontractor intended for use, or which shall be used by the latter in the performance of any contract with the city. Nor shall any officer of the city, directly or indirectly, sell or furnish any material to such contractor or subcontractor to be used, or which shall be used by such contractor or subcontractor in the performance of any such contract, or any employee of the city in performance thereof. Any violation of the provisions of this section shall avoid the obligation of every such contract on the part of the city and defeat any recovery for any materials so sold or furnished. Nor shall any officer receive any pay or perquisities from the city other than his salary, as provided by ordinance and this charter, and the city council shall not pay or appropriate any money or other valuable thing to any person, not an officer, for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such corporation, unless the same is specially appropriated and ordered by a unanimous vote of all the members elected to the council.

Amended 1891, p. 137. Corporation may recover for printing notices, etc., though one of its stockholders is a councilman. 29, 149 (45 N. W., 245).

2529. **Ordinances—Rules for passing.**—All ordinances shall be passed pursuant to such rules and regulations as the council may provide, and all such ordinances may be proved by the certificate of the clerk under the seal of the city, and when printed or published in book or pamphlet form, and purporting to be published by the authority of the city, shall be read and received in evidence in all courts and places without further proof. The passage, approval, and publication or posting of said ordinances shall be sufficiently proved by a certificate under the seal of the city, from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, and when and by whom, and where the same was posted up. And when ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts without further proof.

2530. **Ordinances—Style.**—The style of ordinances shall be: "Be it ordained by the mayor and council of ——," and all ordinances of a general nature shall, within one month after they are passed, be published in some newsaper published within the city, or in pamphlet form, to be distributed or sold, as may be provided by ordinance, and every ordinance fixing a penalty or forfeiture for its violation shall not take effect until one week after its publication in the manner above prescribed; *Provided, however,* That in case of riots, infectious or contagious diseases, or other impending danger, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor, immediately upon its first publication as above provided. All other ordinances shall take effect immediately after their passage and approval, unless otherwise provided in the ordinance itself.

See **29**, 153 (45 N. W., 243).

2531. The mayor and council shall have power to **levy** and collect **taxes** for general purposes, not exceeding ten mills on the dollar valuation in any one year, on all real estate and personal property within the corporate limits of the city, taxable according to the laws of this state, and such tax for interest and sinking fund of the bonded debt as may be requisite and authorized by law. And the mayor and council shall also have power to levy and collect on all such property for the sole and exclusive purpose of maintaining and paying the police department of said city, not to exceed three (3) mills on the dollar valuation in any one year; taxes levied for said purposes to constitute a special fund therefor; and shall also have power to levy and collect on all such property for the sole and exclusive purpose of maintaining and paying the fire department of any such city, not to exeeed five (5) mills on the dollar valuation in any one year; taxes levied for said purpose to constitute a special fund therefor. The valuation of such property to be taken from the assessment rolls of the proper county, and it shall be the duty of the county clerk to permit the city clerk to make out from the assessment rolls of the county an assessment roll for the city, of all property liable to taxation, as above specified, which the city clerk shall complete on or before the third Monday in June of each year, unless otherwise ordered by the council; upon the completion of such copy of such assessment roll the city clerk shall add to said roll any and all real estate in said city which is exempt from taxation for general purposes, and assess the same as near as may be to correspond with the assessed value of like property on said county roll and enter the same in a separate column for the purpose of special assessment in said city, authorized by law, and shall be subject to equalization. The council shall also have the power to assess, levy and collect a **poll tax**, not to exceed three (3) dollars, upon every male inhabitant of said city between the ages of twenty-one (21) and fifty (50) years, sane, and not a public charge as a pauper, or member of the police or fire department. The council shall also have power to assess, levy and collect a special tax on all dogs in the city, and the fund so arising shall be paid into the special police fund of the city. The road taxes collected from property in the city shall be paid to the city treasurer and expended as the council may direct.

Amended 1891, p. 138.

2532. **Equalization.**—The council shall have power to act as a board of eqalization for the city, to equalize all assessments, and to correct any error in the listing or valuation of property, and to supply any omissions in the same, and shall have the same power as county commissioners have in similiar cases. And when such roll is completed the council shall hold a session of not less than five (5) days as a board of equalization, giving notice of such sitting at least six days prior thereto through a newspaper published and of general circulation in the city. The council, sitting as such board of equalization, shall ascertain whether the valuations in one ward, bear a just relation to all the wards in the city, and may increase or diminish the aggregate valuation of property in any ward by adding to or deducting such sum upon the dollar as may be necessary to produce a just relation between all the valuations of all the wards in the city, but shall in no instance reduce the aggregate valuation of all the wards below the aggregate valuations thereof as made by the assessors, neither shall it increase the aggregate valuation of all the wards, except in such amount as may be actually necessary and incidental to a proper and just equalization. And in all cases before any special tax, except sidewalk tax, shall be finally levied, it shall be the duty of the council to sit as a board of equalization for the purpose of equalizing any such proposed levy, special taxes, or assessments, and correcting any error therein, giving notice of sitting in the same manner as provided in this section, stating in such notice the purpose for which it will sit, and it shall continue such session for not less than two (2) days, and at such session it shall hear all complaints that the owners of the property so to be assessed and taxed may make, and it shall be its duty to equalize any such assessment by correcting any errors therein, and thereupon said assessments and special taxes shall be finally levied, and the same shall be a lien upon all the property of such persons that may be listed and assessed for taxation that year; *Provided*, That no complaint that another is assessed too low shall be acted upon, and no assessment shall be increased until the person so assessed shall be notified of such complaint or of such proposed increased assessment, if a resident of the city.

2533. As soon as the assessment roll shall have been equalized, and the annual levy made thereon, the city clerk shall immediately make out a **tax list**, which shall be as nearly as practicable in the form prescribed by law for the tax list to be furnished county treasurers, and he shall deliver such tax list to the city treasurer on or before the first day of October next, after the date of the levy in each year; errors in the names of persons assessed may be corrected by the treasurer and the tax collected from the person intended, and in case the treasurer find that any land has been omitted in the assessment, he shall report that fact to the council, who may assess the same and direct the **correction** of the tax list.

2534. On the first day of December next succeeding the levy thereof, all unpaid city **taxes** shall become **delinquent**, and shall thereafter draw **interest** at the rate of one per cent per month; *Provided*, That if one-half of such tax is paid on or before the same becomes delinquent, and the remaining one-half on or before the first day of June following, no interest shall be charged thereon. It shall be the duty of the city treasurer to proceed, as soon as practicable, after the first day of January, to make such delinquent tax out of the personal property of such delinquent if any such property can be found within the city; no demand of taxes shall be necessary, but it shall be the duty of every person owing any municipal tax or taxes in such city to attend at the treasurer's office and pay the same.

Amended 1891, p. 140.

2535. **Tax warrant.**—To each tax list so delivered a warrant under the hand of the city clerk shall be annexed, to be substantially in the following form, to-wit: "In the name and by the authority of the state of Nebraska: To ———, city treasurer of the city of ———, in Nebraska: You are hereby commanded to collect from each of the persons and corporations named in the annexed tax list and the owners of the real estate described therein, the taxes set down in such list, opposite their respective names, and the several parcels of land described therein; and in case any person or corporation upon whom any such tax or sum is imposed, or who by law is required to pay the same, shall refuse or neglect to pay the full amount thereof before the first day of January next, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed as are by law required to pay such tax. Given under my hand and official seal this ——— day of ———, A. D. 18—. ———, city clerk of the city of ———."

2536. **Treasurer—Power of.**—Such warrant shall fully authorize and empower the city treasurer to levy on any personal property belonging to any such delinquent, and collect therefrom any municipal taxes then due from such delinquent, and such warrant shall be a full and complete justification to the treasurer in any action brought to recover damages or costs for any act or proceeding by him done or taken in conformity with the commands thereof.

2537. **Same.**—The powers, rights, duties, and proceedings of the city treasurer in cities governed by this act, and of such deputies as he may appoint, shall in all respects, as far as applicable, and except as herein otherwise provided, be the same in respect to the collection of municipal taxes and assessments as those of county treasurers in like cases with reference to the collection of county taxes; and he shall be paid fees of one and one-half per centum of all taxes collected by him, not to exceed twelve hundred dollars per year as before limited.

2538. **Taxes—Property liable.**—All municipal taxes shall be collected from the personal property of the person, persons, or body corporate owing the same, whenever the same is practicable, and whenever personal property cannot be found belonging to such person, persons, or bodies corporate, then, and in that case, all such delinquent municipal taxes as may have been levied on any real estate within such city shall be collected by the county treasurer of the county in which such city is situated, by sale of such real estate, the same as in the case of delinquent county taxes.

2539. **Same—Ordinances for collecting.**—The mayor and council shall have full power and authority to pass any and all ordinances not inconsistent with the laws of this state that they may deem necessary to secure the speedy and thorough collection of all municipal taxes and special assessments.

2540. **Same—How paid.**—All municipal taxes and all local special assessments in such city shall be paid in cash and warrants of said city drawn on the fund for which the same is offered; *Provided*, That coupons on any bonds of such city shall be received for any tax or assessment.

2541. **Same—Realty—Sale of.**—It shall be the duty of the city treasurer, on or before the fifteenth day of September of each year, to make out a complete delinquent list of all lots, lands, or parcels of real estate, the taxes and assessments on which for the previous year remain uncollected at that time, with the amount of such taxes or assessments, together with penalty and interest due from each lot or parcel of real estate set opposite the same, arranging the several lots, lands, or parcels of real estate in such list in the order that they appear on the tax lists, stating also in each case the purpose for which the tax or assessment was levied. The county treasurer shall receive such delinquent list and advertise the real estate therein described for sale for such delinquent taxes, or assessments, at the same time he advertises the sale of real estate for delinquent county taxes, by adding the amount of such delinquent city taxes and assessments to the amount of delinquent state, county, and other taxes, and he shall sell such lots, lands, or parcels of real estate for the purpose of paying all such delinquent taxes or assessments, and shall credit such city for the amount of taxes or assessments so collected, which shall be subject to the order of the treasurer of such city. In the sale of any real estate as above provided for, and in the giving of certificates of sale and tax deeds therefor, the county treasurer shall proceed in the same manner as is or may be provided by law for his proceedings in the sale of real estates for delinquent county taxes, and with like power and authority; and the real estate so sold may be redeemed within the time and upon the same terms and conditions in every respect as is or may be provided by law for the redemption of real estate sold for delinquent county taxes; *Provided*, That under this act the county treasurer shall be authorized to collect only by sale of real estate; *And provided further*, It shall be the duty of the city treasurer, upon any taxes being collected by him after the delinquent tax list shall have been delivered to the county treasurer, to forthwith notify the county treasurer of such collection that the same may be canceled on the delinquent tax list; *Provided further*, That the failure, neglect, or refusal of the city treasurer to make the tax assessed against any real estate by distress and sale of the personal property of the owners thereof shall not in anywise affect or invalidate the sale of such lands for such tax.

2542. **Tax liens.**—Special assessments upon real estate shall be a lien from the date of the levy, and interest on all unpaid installments shall be payable annually, and municipal taxes thereon from the date fixed by the general revenue law, which lien shall be perpetual; and in case of sale of any property for such tax or special assessment the same shall be governed by the general revenue act, and the rights and limitations shall be the same as in other tax sales, except as provided in this act.

2543. **Assessments—Irregularities.**—Irregularities in making assessments and returns thereof, in the equalization of assessments and in the mode and manner of advertising the sale of any property, shall not invalidate or affect the sale thereof, when advertised and sold for delinquent city taxes or special assessments as herein provided; nor shall the sale of any real estate for any such taxes or assessments be invalid on account of such real estate having been listed in any other name than that of the rightful owner.

2544. **Same—Relevy—Irregularities.**—The foregoing provisions shall apply to all taxes now due or heretofore delinquent or that may hereafter become due and delinquent. Whenever any municipal tax or taxes levied for any former year shall remain uncollected because of any defect, error, or irregularity in either the power or manner of making the levy thereof, it shall be lawful for the mayor and council of such city to again levy the tax upon the property so delinquent, in lieu of such former tax or taxes, and at the same rate and upon the same assessment as such former tax or taxes were levied, and such tax or taxes shall be inserted in the tax list and shall be collected in the same manner as other general taxes are. The city **council** may at any time correct any error or defect or supply any omission in the assessment or listing of any property subject to municipal tax made for the purpose of taxation for the then current fiscal year, and may require any and all persons to appear and answer under oath as to their possession or control of personal property subject to municipal taxation. These provisions shall apply equally to general municipal taxes and to special assessments, as far as may be applicable, unless otherwise provided in the ordinance levying the same. Special taxes and assessments shall, except deferred yearly installments for paving purposes, be deemed delinquent if not paid in fifty days after the passage and approval of the ordinances levying the same in each case, and a penalty of five (5) per cent, together with interest at the rate of one (1) per cent a month, shall be paid on all delinquent special taxes or assessments from the time the same shall become delinquent.

2545. **Same—County treasurer.**—The treasurer of the county shall pay over on demand to the treasurer of any city all money received by him arising from taxes levied belonging to such city, together with all money collected as a tax on dogs from the residents of such corporation, for the use of the general fund therein, and also all moneys arising from the levy of the road tax against or upon property in said city, which shall be expended upon the streets and grades in said city.

2546. **Treasurer's books.** The city treasurer shall receive all moneys belonging to the city, and the clerk and treasurer shall keep their books and accounts in such a manner as the mayor and council shall prescribe. The treasurer shall keep a daily cash book, which shall be footed and balanced daily. And such books and accounts shall always be subject to inspection of the mayor, members of the council, and such other persons as they may designate.

2547. **Public moneys—Removal of the treasurer.**—The treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys, and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping, for his own use and benefit, or that of any other person or persons whomsoever. Any violation of this provision shall subject him to immediate removal from office by the city council, who are hereby authorized to declare such office vacant; and the city council shall appoint a successor, who shall hold his office for the remainder of the unexpired term of such officer so removed.

2548. **Treasurer—Annual report.**—The treasurer shall report to the mayor and council annually, and oftener if required, at such time as may be prescribed by ordinance, a full and detailed account of all receipts and expenditures during the preceding fiscal year, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and persons to whom paid, specifying also the time of payment, and all such warrants shall be examined by the finance committee at the time of making such annual report.

2549. **Ordinances—Powers.**—In addition to the powers herein granted, cities governed under the provisions of this act shall have power by ordinances:

I. **To levy taxes.**—To levy taxes for general revenue purposes on all property within the limits of said city taxable according to the laws of the state of Nebraska.

II. **Same—Special assessments.**—To levy any other tax or special assessment authorized by law, and to appropriate money, and provide for the payment of the debts and expenses of the city.

III. (**Streets, grades, and repairs**)—To provide for the **grading** and repairing of any street, avenue or alley, and the construction of **bridges**, culverts, viaducts, and sewers, and shall defray the repairs of the same out of the proper fund of such city; but no street shall be graded except the same be ordered done by the affirmative vote of two-thirds of the city council. The mayor and council shall have power to require any railroad company or companies, owning or operating any railroad track or tracks upon or across any public street or streets of the city, to erect, construct, reconstruct, complete, and keep in repair any viaduct or viaducts upon or along such street or streets, and over or under such track or tracks, including the approaches of such viaduct or viaducts as may be deemed and declared by the mayor and council necessary for the safety and protection of the public; *Provided*, That the approaches to any such viaduct, which any railroad company or companies may be required to construct, reconstruct, and keep in repair, shall not exceed for each viaduct a total distance of eight hundred feet. Whenever any such viaduct shall be deemed and declared by ordinance necessary for the safety and protection of the public, the mayor and council shall provide for appraising, assessing, and determining the damages, if any, which may be caused to any property by reason of the construction of such viaduct and its approaches. The proceeding for this purpose shall be the same as provided herein for the purpose of determining damages to property owners by reason of the change of grade of a street, and such damages shall be paid by the city, and may be assessed by the city council against property benefited, and the cost of approaches beyond said distance of eight hundred feet may also be assessed by the council against property benefited by reason of the construction of any such viaduct and its approaches. The width, height, and strength of any such viaduct and the approaches thereto, the material therefor, and the manner of the construction thereof shall be as required by the board of public works, and as may be approved by the mayor and council. When two or more railroad companies own or operate separate lines to be crossed by any such viaduct, the proportion thereof and the approaches thereto, to be constructed by each, or the cost to be borne by each, shall be determined by the mayor and council. After completion of any such viaduct, any revenue derived therefrom by the crossing thereon of street railway lines, or otherwise, shall constitute a special fund, and shall be applied in making repairs to such viaduct. All ordinary repairs to any such viaduct, or to the approaches thereto, shall be paid out of such fund, or shall be borne by the city.

Amended 1891, p. 140.

IV. **Same—Care for—Control—Name and rename.**—To open, widen, or otherwise improve, vacate, care for, control, name, and rename any street, avenue, alley, or lane, parks, and squares within the limits of the city, and also to create, open, and improve any new street, avenue, alley, or lane; *Provided,* That all damages sustained by the owners of the property thereon shall be ascertained in the manner herein provided; *Provided further,* That whenever any street, alley, or lane shall be vacated, the same shall revert to the owners of the adjacent real estate one-half on each side thereof.

V. **Same—Sprinkling.**—On written petition of not less than one-half of the owners of feet front of the land fronting on any street or any specified part thereof, the mayor and council may order such street or such specified part thereof to be sprinkled with water at such time or times as the council may deem proper. Such sprinkling shall be done by contract, awarded to the lowest bidder in each case, or for the entire city or specified district thereof. To pay the expense of such sprinkling, the council may make special assessments upon the lands abutting upon such street or specified part thereof, either on the valuation thereof, or listed for taxation, or by foot front. Such assessments shall be collected by special taxes.

VI. The council shall have power to set aside a space designated as the **sidewalk space,** on each side of all streets and avenues, for sidewalks and the planting of trees and grass, and may require and regulate the planting and protecting of the trees and grass, and the construction of sidewalks in such space. Such space shall extend from lot line to curb. Whenever any street or avenue shall have been brought to the established grade or permanently improved, the council may require the owners of the real estate adjacent thereto, to bring the sidewalk space along or in front of such real estate to the established grade, and to lay a sidewalk thereon of such width and materials as the council may determine; and in case any such property owner shall refuse and neglect to cause such grading to be done or sidewalk constructed within thirty days after being notified in the manner prescribed by ordinance, the council may order said grading to be done and said **sidewalk** constructed, and **assess** the **cost** thereof against the real estate in front of which the said work was done. Whenever any street or avenue shall have been brought to the established grade or permanently improved, the council may require the owners of the real estate adjacent thereto to bring the sidewalk space along or in front of such real estate to the established grade, and to lay a sidewalk thereon of such width and material and in such space in said sidewalk space as the council may determine and shall have so ordered by proper ordinances. And in case any such property owners shall refuse and neglect to cause such grading to be done or said sidewalk constructed within thirty days after being notified in the manner provided by ordinance, the council may order said grading to be done and said sidewalks constructed in conformity with the ordinances regulating the same, and shall have power to take up and remove all walks not laid in conformity with such rules and regulations as may be prescribed. And said council shall, at the beginning of each municipal year, receive bids for the erection of all sidewalks hereinafter to be laid or relaid as provided herein, and shall, award therefor a contract to the lowest bidder for the year, and said contractor shall be required to lay or relay all sidewalks as ordered by the said council in accordance with the ordinances of said city, and the said contracter shall receive his pay for such work from the assessments against the real estate in front of which the said work was done; and that the cost of all such work, laying and relaying such walks in conformity with such ordinances, shall be assessed against the real estate in front of which the said work was done. And the city treasurer of said city shall pay over to such contracter upon order of the council all assessments or special taxes against such real estate collected, together with the interest and penalty collected thereon, which shall in each case be full compensation to such contracter for any work so done under his said contract along and in front of any property upon which said assessment or tax shall have been collected. The council may by ordinance provide for the laying of temporary plank sidewalks upon the natural surface of the ground upon streets not brought to the established grade, and in case of refusal or neglect of any property owner in front of or along the side of whose lot such sidewalk may be ordered to construct the same within thirty days after being served with notice in the manner prescribed by ordinance, the council may cause the same to be constructed, and assess the cost thereof on the property in front of which the same shall be laid. In case any property owner shall refuse or neglect to repair the sidewalk adjacent to his property within two (2) days after being notified so to do in the manner prescribed by ordinance, the proper officer may cause said walk to be repaired, and shall report the cost thereof to the council, when the same may be assessed against such property. The cost of grading sidewalk space, and the construction, replacement, or repair of sidewalks as herein provided, shall be assessed at a regular meeting of the council, by a resolution fixing the cost of such grading, construction, or repairs, along the lot adjacent thereto, as a special assessment thereon; and the amount charged against the same, with the vote thereon by yeas and nays, shall be spread at length upon the minutes. Notice of the time of holding such meeting, and the purpose for which it is held, shall be published once in some newspaper published and of general circulation in said city, at least five days before the same shall be held, or, in lieu thereof, personal service may be had upon the persons owning the property to be assessed. All such assessments shall be known as special sidewalk assessments, and, with the cost of notice, shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, subject to the same penalties, and collected in like manner, as other city taxes, but such special assessments shall draw interest at one (1) per cent per month. The same shall be certified by the city clerk to the city treasurer, who shall place the same on the tax list of the current year against such property. It is hereby made the duty of all real estate owners and occupants to keep the sidewalk alongside or in front of the same in good repair and free from snow and ice, and other obstructions, and they shall be liable for all damages or injuries occasioned by reason of the defective condition of any such sidewalk.

Amended 1891, p. 142.

VII. **License—Business.**—To raise revenue by levying and collecting a license tax on any corporation or business within the limits of the city, and regulate the same by ordinance, except as otherwise in this act provided. All such taxes shall be uniform in respect to the class upon which they are imposed; *Provided, however*, That all scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

An occupation tax, in addition to license tax, may be imposed, but cannot be made condition precedent to issuing the license. **19**, 191 (26 N. W., 714).

VIII. **Same—Dogs.**—To regulate, license, or prohibit the running at large of dogs, and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

IX. **Streets—Obstructions to.**—To remove all obstructions from the sidewalks, curbstones, gutters, and cross-walks at the expense of the owners or occupiers of the grounds fronting thereon, or at the expense of the person placing the same there, and to regulate the building of bulk-heads, cellars, and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over adjoining excavation through and under the sidewalks in said city.

X. **Same—Horses standing.**—To compel persons to fasten their horses or other animals attached to vehicles while standing in the streets and provide penalties for the neglect thereof.

XI. **Same—Regulate traffic.**—To regulate the transportation of articles through the streets, and to prevent injuries to the streets from overloaded vehicles.

XII. **Same—Obstructions—Fast driving, etc.**—To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys, and other city property, and to prevent and punish all horse-racing, fast driving, or riding in the streets, highways, alleys, bridges, or place in the city, and all games, practices, or amusements therein likely to result in damage to any person or property; to regulate, prevent, and punish the riding, driving, or passing of horses, mules, oxen, cattle, or other teams, or any vehicle drawn thereby, over, upon, or across sidewalks, or along any street of the city; to regulate and prevent the use of streets, sidewalks, and public grounds, for signs, sign posts, awnings, telegraph, telephone, or other poles, racks, bulletin boards, and the posting of handbills and advertisements; to regulate traffic and sales upon the street, sidewalks, and public places; to punish and prohibit cruelty to animals; to regulate and prevent the moving of buildings through or upon the streets.

XIII. **Same—Lighting and gas.**—To make contracts with and authorize any person, company, or association to erect gas-works, electric or other light works, in said city, and give such persons, company, or association the privilege of furnishing light for the streets, lanes, and alleys of said city, for any length of time not exceeding five years.

XIV. **Same—Regulate laying mains.**—To provide for the lighting of streets, laying down of gas pipes, and erection of lamp posts, and to regulate the sale and use of gas and electric or other lights, the charge therefor, and the rent of gas meters within the city, and to require the removal from the streets, avenues, and alleys, and the placing under ground of all telegraph, electric, and telephone wires.

XV. **Same—Depots—Street railroads.**—To regulate levees, depots, depot grounds, and places for storing freight and goods, and to provide for and regulate the passage of railways through the streets and public grounds of the city, reserving the rights of all persons injured thereby.

XVI. **Railways—Regulate.**—To regulate the crossing of railway tracks, and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, cars, and trucks within the limits of said city, and prescribe rules relating thereto, and govern the speed thereof, and to make any other and further provisions, rules, and restrictions to prevent accidents at the crossings and on the tracks of railways, and to prevent fires from engines, and to regulate and prescribe the manner of running street cars, to require the heating and cleaning of the same, and to fix and determine the fare charged. To require the lighting of any railway within the city the cars of which are propelled by steam, in such manner as they shall prescribe, and fix and determine the number, style, and size of the lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lamp posts, and in case the owner owning or operating such railway shall fail to comply with such requirements, the council may cause the same to be done, and may assess the expense thereof against such company, and the same shall constitute a lien on any real estate belonging to such company and being within such city, and may be collected in the manner as taxes for general purposes; to require railroad companies to keep flagmen at all railroad crossings of streets, and to provide protection against the injury to persons and property in the use of such railroads; to compel any railroad to raise or lower their railroad tracks to conform to the general grade which may at any time be established by such city, and where such tracks run lengthwise through or over any street, alley, or highway, to keep the same level with the street surface; to compel and require railroad companies to keep open the streets, and to construct and keep in repair ditches, drains, sewers, and culverts along and under their railroad tracks, and to pave their whole right of way on all paved streets, and keep the same in repair.

XVII. **Eminent domain.**—To exercise the power of eminent domain and to take private property for public use, within or without the city, for the purpose of erecting or establishing market houses and market places, streets, hospitals, public buildings, cemeteries, or for any necessary or authorized public purpose; *Provided, however*, That in all cases the city shall make the person or persons whose property shall be taken or injured thereby adequate compensation therefor, to be determined by proceedings instituted in the county court and conducted as by law provided for condemnation by railway companies.

XVIII. **Libraries—Reading rooms.**—To establish and maintain public libraries and reading rooms, to purchase books, papers, maps, and manuscripts therefor, and to receive donations and bequests of money or property for the same, in trust or otherwise, and pass necessary by-laws and regulations for the protection and government of the same.

XIX. **Parks—Public grounds.**—To purchase, hold, and improve public grounds and parks within or without the limits of the city, and provide for the protection and preservation of the same, and to provide for the planting and protection of shade or ornamental and useful trees; *Provided*, That in case the cost of any such improvement shall exceed the sum of $5,000, it shall not be authorized until the ordinance providing therefor shall first be submitted to and ratified by a majority of the legal voters voting thereon.

XX. **Borrow money.**—To borrow money on the credit of the city and to pledge the credit, revenue, and public property of the city for the payment thereof, when authorized in the manner herein provided.

XXI. **Issue bonds.**—To provide for issuing bonds for the purpose of funding any and all indebtedness now existing or hereafter created of the city, now due or to become due, when the same shall have been authorized by a vote of the people; *Provided*, That the mayor and council shall not fund any bonded debt at a higher rate. Such bonds shall be redeemable after ten years, at the option of the city.

XXII. **Sinking fund.**—To make provisions for a sinking fund to pay accruing interest, and to pay at maturity the principal of the bonded indebtedness of the city, and to levy and collect taxes on all taxable property in the city, in addition to other taxes for the purpose of paying the same, and to provide that the said tax shall be paid in cash; and whenever any city has heretofore issued bonds by virtue of any special authority derived from the legislature of the territory or state, the council shall have the power to levy and collect taxes for the purpose of paying such bonds as is provided in the laws giving such authority.

XXIII. **Wards.**—To divide the city into wards, establish the boundaries thereof, and number the same.

XXIV. **Elections.**—To provide for the registration of voters, and may prohibit persons from voting at any or all city elections who shall not have first complied with such regulations and have been registered as required by such ordinance. Such ordinance or ordinances may be repealed, re-enacted, and amended from time to time, as in other cases; *Provided*, That the registration of the last general election shall be valid for any special election. To appoint judges and clerks of elections provided by ordinance for the election of city officers, and prescribing the manner of conducting the same, and the returns thereof, and for deciding contested elections, and for holding special elections for any purpose herein provided, and to fix a compensation of all officers of election. To regulate the holding of primary elections, at which no person shall be permitted to vote, except such person be an elector of the city and affiliated with the political party holding such primary election at the last prior general election, that judges at such primary elections shall be sworn, and may administer oaths, and that any person violating the regulations so established, or who, being disqualified, shall vote at such primary election, or who shall aid, counsel, or abet any disqualified person in voting thereat, may be fined in any sum not exceeding one hundred (100) dollars and shall stand committed until such fine and costs are paid, and shall be disqualified to vote at any city or primary election for the period of one year thereafter.

XXV. **Officers—Removals.**—To provide for removing officers of the city for misconduct whose offices are created and made elective by this act, and to provide for filling such vacancies as may occur in any elective office by appointment by the mayor, by assent of the council, to hold until the next general election.

Vacancy in office of councilman of cities of first-class occurring less than thirty days before city election cannot be filled thereat. **29**, 206 (45 N. W., 279).

XXVI. **Officers—Regulate powers and compensation.**—To regulate and prescribe the powers and duties, and the compensation of the officers of the city not herein provided for.

XXVII. **Official bonds.**—To require all officers or servants elective or appointed in pursuance of this act, except police officers, to give bond and security for the faithful performance of their duties. No officer shall become security upon the official bond of another, or upon any contractor's bond, license, or appeal bond given to the city, or under any ordinance thereof, or from convictions in the police court.

XXVIII. **Reports.**—To require from any officer of the city, at any time, a report in detail of the transactions in his office or of any matters connected therewith.

XXIX. **Census.**—To provide for and cause to be taken the census of the city.

XXX. **Market houses and places.**—To purchase and own grounds for, and to erect and establish market houses and market places, and to regulate and govern the same; to prescribe the fees to be charged persons for stalls therein, provided that the revenue so derived shall be applied, *First*, to the payment of the salaries of officers appointed to take charge of said market house; *Second*, to the payment of repairs of said market house, and *Third*, to the payment of the cost of erecting said market house; and after all salaries, repairs, and cost of construction have been paid, the surplus, if any remaining, shall be disposed of as the council shall direct, and also to contract with any person or persons, or associations of persons, companies, or corporations, for the erection and regulation of said market houses and market places, on such terms and conditions and in such manner as the council may prescribe, and raise all necessary revenue therefor as herein provided; and they may locate such market houses, and market places, and buildings aforesaid on any streets, alleys, or public grounds, or on any land purchased for such purpose; and to provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city; *Provided*, That any such improvement costing in the aggregate a sum greater than five thousand dollars shall not be authorized until the ordinance providing therefor shall be first submitted to and ratified by a majority of the legal voters voting thereon.

XXXI. **Water tax.**—To fix the rate of tax to be paid for the use of water furnished by the city, or any person, or corporation by means of water-works, and provide by ordinance that any tax for the use of water furnished by said city shall be a lien on the property where same is furnished.

Amended 1891, p. 146.

XXXII. **Water-ways.**—To **establish**, alter, and change the channel of water-courses, and to wall and cover them over; to establish, make, and regulate public wells, cisterns, aqueducts, and reservoirs of water, and to provide for filling the same.

XXXIII. **Fire.**—To provide for the organization of a fire department, to procure fire engines, hooks, ladders, buckets, and other apparatus, and to organize fire engine, hook and ladder, and bucket companies, and to prescribe rules of duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations therefor, and to establish regulations for the prevention and extinguishment of fires. To prescribe **limits** within which no building shall be constructed except of brick, stone, or other incombustible material, with fire-proof roof, and to impose a penalty for the violation of such ordinance, and to cause the destruction or removal of any building constructed or repaired in violation of such ordinance; and after such limits are established, no special permits shall be given for the erection or reparation of buildings of combustible material. To regulate the construction and inspection of and order the suppression of, and cleaning of fire-places, chimneys, stoves, stove-pipes, over boilers, kettles, forges, or any apparatus used in any building, manufactory, or business which may be dangerous in causing or promoting fires, and to prescribe limits within which dangerous or obnoxious and offensive business may not be carried on.

XXXIV. **Weights and measures.**—To establish standard weights and measures, and regulate the weights and measures to be used in the city, and to regulate the weighing and measuring of every commodity sold in the city, in all cases not otherwise provided by law, and to prohibit and punish the use of imperfect weights, measures, and weighing apparatus.

XXXV. **Same—Inspection.**—To provide for the inspection and weighing of hay, grain, and coal, the measuring of wood and fuel to be used in the city, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for sale, hay, coal, and wood; to fix the fees and duties of persons authorized to perform such duties.

XXXVI. **Fines—Penalties—Forfeiture.**—To impose fines, forfeitures, and penalties for the breach of any ordinance, and also for the recovery and collection of the same, and in default of payment to provide for confinement in the city prison, or to hard labor in the city upon the streets or elsewhere, for the benefit of the city.

XXXVII. **Suppress indecencies.**—To restrain, prohibit, and suppress unlicensed tippling shops, billiard tables, bowling alleys, and houses of prostitution, opium joints, dens, and other disorderly houses and practices, games and gambling houses, desecration of the Sabbath day, commonly called Sunday, and to prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon said day, and all lotteries, or fraudulent devices and practices for the purpose of obtaining money or property, and all shooting galleries, and all kinds of public indecencies.

XXXVIII. **Disorderly assemblies.**—To prevent and restrain riots, routs, noises, disturbances, or disorderly assemblies in any street, house, or place in the city; to regulate, punish, and prevent the discharge of fire-arms, rockets, powder, fire-works, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent, and punish the carrying of concealed weapons; to arrest, regulate, punish, fine, or set at work on the streets, or elsewhere, all vagrants and persons found in said city without visible means of support or some legitimate business; to regulate and prevent the transportation of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, dynamite, petroleum, or any of the productions thereof, and other material of like nature, and the use of lights in stables, shops, or other places, and the building of bonfires; to regulate and prohibit the piling of building material or any excavation or obstruction in the street.

XXXIX. **Same.**—To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, by intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places, or otherwise violating the public peace by indecent and disorderly conduct or by lewd or lascivious behavior.

XL. **Vagrants—Tramps.**—To provide for the punishment of vagrants, tramps, or common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, watch stuffers, ball game players, persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves.

XLI. **Drainage.**—To require any and all lots or pieces of ground within the city to be drained or filled, so as to prevent stagnant water or any other nuisance accumulating thereon, and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, the council may cause such lots or pieces of ground to be drained or filled, and the costs and expenses thereof shall be levied upon the property so filled or drained, and collected as any other special tax.

XLII. **Nuisance.**—To prevent any person from bringing, having, depositing, or leaving upon or near his premises, or elsewhere within the city, any dead carcass or putrid beef, pork, fish, hides, or skins of any kind, or any other unwholesome substance, and to compel the removal of the same.

XLIII. **Regulate halls, churches, etc.**—To regulate, license, or suppress **halls**, opera houses, churches, places of amusement, entertainment, or instruction, or other buildings used for the assembly of citizens, and to cause them to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire, and for escape from such place in case of fire, and to prevent the overcrowding, and to regulate the placing and use of seats, chairs, benches, scenery, curtains, blinds, screens, or other appliances therein, and to provide that for any violation of any such regulation a penalty of two hundred dollars shall be imposed, and that upon conviction of any such licensee of any violation of any ordinance regulating such places, the license of any such place shall be revoked by the mayor and council; and whenever the mayor and council shall by resolution declare any such place to be unsafe, the license thereof shall be thereby revoked, and the council may provide that in any case where they have so revoked a license, any owner, proprietor, manager, lessee, or person opening, using, or permitting such place to be opened or used for anypurpose involving the assemblage of more than twelve persons, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not exceeding two hundred dollars.

XLIV. **Same—Construction of buildings.**—To prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and prescribe the number and construction and means of exit and entrance and the number and construction of fire escapes, and to require the keeper or proprietor of any hotel, boarding house, or dormitory to provide and maintain such sufficient and such number of ladders, ropes, balconies, and stairways, and other appliances as by ordinance may be prescribed to facilitate the escape of persons from any such buildings in case of fires.

XLV. **Domestic animals.**—To regulate or prohibit the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibitions, and the fees and expense of impounding and keeping the same, and of such sale.

XLVI. **Pounds.**—To provide for the erection of all needful pens, pounds, and buildings for the use of the city, within or without the city limits, and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

XLVII. **Auctions.**—To regulate, license, or prohibit the sale of domestic animals, or of goods, wares, and merchandise, at public auction on the streets, alleys, highways, or any public grounds within the city; to regulate or license the auctioneering of goods, wares, and merchandise.

XLVIII. **Contagious diseases.**—To make regulations to prevent the introduction of contagious, infectious, or malignant diseases into the city, and to create a board of health, to make quarantine laws for that purpose, and enforce the same within five miles of the city.

XLIX. **Work-houses, etc.**—To erect, establish, and regulate work-houses and poor-houses, houses of correction, jails, station houses, and other necessary buildings, and to provide for the government and support of the same.

L. **Health.**—To make regulations to secure the general health of the city; to prescribe rules for the prevention, abatement, and removal of nuisances; to make and prescribe regulations for the construction, location, and keeping in order of all slaughter houses, stock yards, warehouses, stables, or other places where offensive matter is kept or is likely to accumulate, within the corporate limits, or within five miles thereof.

LI. **Cemeteries.**—To purchase, hold, and pay for, in the manner herein provided, lands not exceeding eighty acres, in one body, outside of the limits of such city, for the purpose of the burial of the dead, and all necessary grounds for hospital grounds and water-works, and to have and exercise police jurisdiction over the same, and over any cemetery lying near said city, and used by inhabitants thereof.

LII. **Same.**—To survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds, and avenues leading thereto owned by such city; to construct walks, rear and protect ornamental trees therein, and provide for paying the expenses thereof.

LIII. **Same.**—To convey cemetery lots owned by such city, by certificates signed by the mayor and countersigned by the clerk, under the seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such plat, or map, for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as sufficient description thereof.

LIV. **Same—Lots.**—To limit the number of cemetery lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, **adorning**, and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots and any improper adornment thereof, but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or lots.

LV. **Same—Rules.**—To pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting, and governing the cemetery, the owners of lots therein, vistitors thereof, and trespassers therein. And the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself.

LVI. **Same—Regulate.**—To make all such ordinances, by-laws, rules, regulations, and resolutions not inconsistent with the laws of the state as may be expedient, in addition to the special powers in this section granted, maintaining the peace, good government, and welfare of the city, and its trade, commerce, and manufactures, and to enforce all ordinances by inflicting penalties for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment, until the amount of said judgment and costs shall be paid.

LVII. **Council—President of.**—To elect one of their own body, who will be styled the "**president** of the council," and who shall preside at all meetings of the council in the absence of the mayor, and in the absence of the mayor and president to elect one of their own body to occupy his place temporarily, and who shall be styled "acting president of the council"; and the president or acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council, and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

LVIII. **Ordinances—Revision of.**—To provide for the revision of the ordinances from time to time and for their publication in pamphlet or book form, with or without the statutes relative to cities governed by this act.

LIX. **Hospitals.**—To purchase or otherwise acquire ground for and erect, establish, regulate, and repair a city hospital, and when authorized thereto by a vote of a majority of the electors at any election, may issue bonds of the city for an amount not exceeding in any one year the sum of $10,000 for that purpose.

LX. **Same—Management of.**—The management, direction, and control of such hospital, when completed and ready for use, and the furnishing thereof, shall be vested in a board of commissioners, called the "board of hospital commissioners," subject to the ordinances of the council. Such board shall consist of the mayor, who shall by virtue of his office be its president, and one trustee from each ward, appointed by the mayor with the consent of the council, each of which commissioners shall be a resident freehold elector of the city, and they shall not receive any compensation for their services. The term of the appointed members of the board shall be three years, but when any such board is first organized, the mayor shall appoint two members for one year, two for two years, and two for three years, respectively, and thereafter two members shall be appointed each year for the full term of three years. A majority of the board shall constitute a quorum.

LXI. **Meetings.**—The board shall hold regular meetings at such time and place as may be agreed upon, and cause to be kept a full record of its proceedings. It shall have power to employ a superintendent, steward, and nurses, and such other employees as the council may provide. The steward shall act as clerk of the board. The compensation of all employees shall be fixed by the mayor and council, and the board shall have power to contract for all necessary supplies for such hospital.

LXII. **Rules.**—The board shall establish such rules for the government of such hospital and the admission of persons to its privileges as it may deem expedient. It shall also appoint a corps of four physicians and four surgeons, who shall be removable at the pleasure of the board, and who shall be qualified and reputable members of their profession, and who shall receive no compensation. One of said physicians and surgeons shall be in daily attendance for three months in succession of each year, and meetings of the full corps for consultation shall be held whenever deemed necessary by the number then in attendance. No religious or sectarian association, organization, or body shall be permitted to manage or control said hospital.

LXIII. The council may enter into an **agreement with** a corporation or **association,** organized for charitable pueposes in such municipal corporation for the erection and management of a **hospital** for the sick and disabled, and have a permanent interest therein, to such an extent and upon such terms and conditions as may be agreed upon between the council and such corporation or association. And the council shall provide for the payment of the amount agreed upon, for any interest therein so acquired, either in one payment or in installments, or so much from year to year as the parties may stipulate; *Provided,* Such agreement shall not be made if the city shall have exercised the powers conferred by the preceding subdivisions of this section, and established a hospital as therein provided.

2550. The council shall have **power to open,** extend, widen, narrow, grade, curb, gutter, and pave, or otherwise **improve** and keep in good repair, or cause the same to be done, in any manner they may deem proper, any **street,** avenue, or alley within the limits of the city, and may grade partially or to the established grade, or park or otherwise improve any width, or part of any street, avenue, or alley; and to defray the cost and expense of such improvements, or any of them, the mayor and council of such city shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, or abutting upon, the street or alley thus in whole or in part opened, widened, curbed and guttered, graded, parked, extended, constructed, or otherwise improved or repaired, or which may be specially benefited by any of said improvements; *Provided,* That the above provisions shall not apply to ordinary repairs of streets or alleys; *Provided further*, That where any street is to be graded under the provisions of this section, but not to the established grade, it shall be done only after the owners representing three-fifths ($\frac{3}{5}$) of the front feet of the property abutting on the part of such street to be so partially graded shall have petitioned the city council for such work to be done; *Provided further*, That curbing and guttering shall not be ordered or required to be laid on any street, avenue, or alley, not ordered to be paved, except on a petition of three-fifths ($\frac{3}{5}$) of the owners of the property abutting along the line of that portion of the street, avenue, or alley to be curbed and guttered. The mayor and council of any city governed by this act shall have **power to pave,** repave, or macadamize any street or alley, or part thereof, in any city, and for that purpose to create suitable **paving districts,** which shall be consecutively numbered, such work to be done under contract and under the superintendence of the board of public works of the city. Such work shall be ordered done only after the owners of lots or lands abutting upon the streets or alleys within any paving district representing three-fifths ($\frac{3}{5}$) of front feet thereon shall have petitioned the council to pave, repave, or macadamize such streets or alleys, and in all cases of paving, repaving, or macadamizing, there shall be used such material as such majority of owners shall determine upon; *Provided*, the council shall be notified in writing by said owners of such determination within thirty days next after the passage and approval of the ordinance ordering such paving, repaving, or macadamizing. In case such owners fail to designate the material they desire used in such paving, repaving, or macadamizing, in the manner and within the time provided above, the mayor and council shall determine upon the material to be used. The **cost** of grading, paving, macadamizing, or repaving the streets and alleys within any paving district except the intersection of streets and space opposite alleys within such districts shall be **assessed upon** the **lots** and lands especially **benefited** thereby in such district, in proportion to such benefits, to be determined by the mayor and council under the provisions of this act. The assessment of the special taxes for paving purposes herein provided for shall be made as follows: The total cost of the improvement shall be levied at one time upon the property, and become delinquent as hereinafter provided: One-tenth ($\frac{1}{10}$) of the total amount shall become delinquent in fifty (50) days after such levy, one-tenth ($\frac{1}{10}$) shall become due in one year, one-tenth ($\frac{1}{10}$) in two years, one-tenth ($\frac{1}{10}$) in three years, one-tenth ($\frac{1}{10}$) in four years, one-tenth ($\frac{1}{10}$) in five years, one-tenth ($\frac{1}{10}$) in six years, one-tenth ($\frac{1}{10}$) in seven years, one-tenth ($\frac{1}{10}$) in eight years, one-tenth ($\frac{1}{10}$) in nine years. Each of the said installments, except the first, shall become delinquent fifty (50) days after becoming due, and shall draw interest at the rate of six (6) per cent per annum from the time of the levy aforesaid, payable annually until the same shall become delinquent, and after the same shall become delinquent a penalty of one (1) per cent the first month, two (2) per cent the second month and thereafter until paid, shall be paid thereon as in the case of other special taxes. The council shall have power to require owners of real estate, adjacent to any street about to be paved, to lay service pipes to connect such real estate with the city water mains, and in case any such owner shall neglect or refuse to lay the same before such paving is laid, the council may cause such service pipe to be laid, and assess the cost thereof, in the same manner as assessments for sidewalks. Such **taxes** shall be collected and **enforced** as in other cases of special taxes. In all cases of special taxes, the city treasurer shall have authority, after the same or any part thereof shall have become delinquent, to seize personal property of any person who owns the real estate upon which such taxes have been levied, and to sell such personal property for the satisfaction of such taxes upon the same advertisement and in the same manner that constables are now authorized by law to seize and sell personal property upon execution; but failure to seize and sell personal property shall in no wise affect the lien of the tax or any proceedings authorized by law to enforce the tax. In case of omissions, errors, or mistakes, in making such assessments or levy, in respect to the total cost of the improvement, or deficiencies, or otherwise, it shall be competent for the council to make a supplemental assessment and levy to supply such deficiencies, omissions, errors, or mistakes. The cost of grading, paving, macadamizing, or repaving the intersections of streets and spaces opposite alleys, or in any paving district, shall be paid by the city as hereinafter provided, but nothing herein contained shall be hereby construed to exempt any street or any other railway company from paving or repaving its whole right of way, including all space between and one foot beyond their outer rails at its own cost, whenever any street shall be ordered graded, paved, or repaved by the mayor and council of the city, as provided by law; *Provided,* That in lieu of the above, and until January 1, 1893, such street railways shall only be required to pave between the rails of each track. For the purpose of paying the cost of grading, paving, macadamizing, or repaving the streets and alleys in any paving district exclusive of the intersections of streets and spaces opposite alleys therein, the mayor and council shall have power and may by ordinance cause to be issued bonds of the city, to be called "**District Paving Bonds** of District No. —," payable in not exceeding ten years from date, and to bear interest payable annually not exceeding the rate of six (6) per cent per annum, with interest coupons attached, and in such cases shall also provide that such special taxes and assessments shall constitute a sinking fund for the payment of said bonds and interest; *Provided,* That the entire cost of grading, paving, repaving, or macadamizing any such streets or alleys properly chargeable to any lots or lands within any such paving district, according to the front feet thereof, may be paid by the owner of such lots or lands within fifty days from the levy of such special taxes, and thereupon such lots or lands shall be exempt from any lien or charge therefor, and if said assessment, or any part thereof, shall fail or for any reason be invalid, the mayor and council may make other and further assessments upon said lots or lands as may be required to collect from the same the cost of any grading, paving, or macadamizing properly chargeable thereto as herein provided. Whenever the mayor and council deem it expedient they shall have power for the purpose of paying the cost of grading, paving, repaving, or macadamizing the intersection of streets, and spaces opposite alleys in the city, to issue bonds of the city to run not more than twenty years, and to bear interest payable semi-annually at a rate not exceeding six (6) per cent per annum, with coupons attached, to be called "**Paving Bonds,**" and the proceeds of which shall be used for no other purpose than paying for the cost of grading, paving, repaving, or macadamizing the intersections of streets and alleys in the city; *Provided,* That the aggregate amount of such bonds issued in one year shall not exceed the sum of fifty thousand dollars ($50,000); *And provided further,* That no such bonds shall be issued until the question of issuing the same has been submitted to the electors of the city, at a general or special election therein, and authorized by a vote of a majority of the electors voting at such election; *Provided further,* That in all cases in which any city shall have prior to the passage of this act issued and disposed of bonds for the purpose hereinbefore provided to provide a fund for payment of paving or curbing in compliance with the terms of contract therefor, and by reason of delay of the contractor in completing such contract, any of said bonds shall have matured, or shall mature, before the city shall have been able to levy a tax for payment thereof, and the city may have paid, or shall pay, said bonds from the proceeds of said sale to prevent default thereof, or that any be still overdue and unpaid, in such cases said bonds may be reissued to mature at such times beyond the maturity of all other bonds of the same series as the assessments made for such improvement will meet the reissued bonds when mature; *And provided further*, That hereafter no bonds shall be issued or sold except as, and when, the obligations of the city require the payment of the money by the city. If in any city, governed by this act, there shall be any real estate not subject to assessment or special taxes for paving purposes, the mayor and council shall have power to grade and pave in front of the same, and to pay the cost thereof that would otherwise be chargeable on such real estate in the same manner as herein provided for the grading und paving of intersections of streets, and paying therefor. The word "lot," as in this act used, shall be taken to mean a "lot" as described and designated upon the recorded plat of such city, and in case there is no recorded plat of any such city, it shall mean a lot as described and designated upon any generally recognized map of such city. The word "land" shall mean any subdivided real estate; *Provided*, That if the lots and real estate abutting upon that part of the streets ordered graded, paved, repaved, or macadamized, as shown upon any such recorded plat or map are not of a uniform depth, or if for any other reason it shall appear just and proper to the mayor and council, the mayor and council are authorized and empowered to determine and establish the depth to which the real estate shall be charged and assessed, with the cost of improvement which shall be determined and established according to the benefits accruing to the property by reason of the improvement. Real estate may be so charged and assessed to a greater depth than the depth of the lots as shown upon any such map or plat. The mayor and council in determining whether the requisite majority of owners who are hereinbefore authorized to petition for grading, paving, repaving, or macadamizing, and determine the kind of material to be used therefor, have joined in such petition and determination, consider and take into account all the owners of real estate to be charged and assessed with the cost of improvement. The provisions of this section in regard to the depth to which the real estate may be charged and assessed shall apply to all special taxes that may be levied, in proportion to the foot front in cities governed by this act. Whenever curbing, or curbing and guttering, is done upon any street or avenue in any paving district in which paving has been ordered, and the mayor and council shall deem it expedient so to do, they shall have the power and authority, for the purpose of paying the cost of such curbing and guttering, to cause to be issued bonds of the city, to be called "**Curbing and Guttering Bonds,**" of paving district No. ——, payable in not exceeding ten years from date, and to bear interest, payable annually, not exceeding the rate of six (6) per cent per annum, with interest coupons attached, and in such cases shall assess at one time the total cost of such curbing and guttering, or curbing, as the case may be, upon the property abutting or adjacent to the portion of the street or avenue so improved, according to special benefits, such assessment to become delinquent the same as special taxes for paving purposes, and to draw the same rate of interest and to be subject to the same penalties and be paid in the same manner as special taxes for paving purposes, and the special tax so assessed shall constitute a sinking fund for the payment of said bonds and interest. All grading, paving, macadamizing, curbing, or guttering of any streets, avenues, or alleys in the city for which, or part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder, to be determined by the council; *Provided*, That whenever the property owners representing a majority of the property in any paving district, or along that portion of any street, avenue, or alley to be improved, shall petition the mayor and council to have such grading, paving, macadamizing, curbing, or guttering done by day's work, the same shall be done under the direction and supervision of the board of public works; *Provided, also*, That in all matters of contract with the city for work to be done, or material furnished, parties contracting shall give bond to the city, with not less than two sureties, in one-half the amount of said contract, for the faithful performance of the same. Sureties on said bonds shall be resident freeholders of the county within which said city is situate, and shall justify under oath that they are worth double the amount for which they may sign said bond, over and above all debts, obligations, and exemptions; *Provided, also*, That no contract or extensions of contracts for a period of more than two years shall at any time be made or entered into, without first having submitted the same to a vote of the people at some general or special election, held in accordance with existing laws governing the voting of bonds. Such provision shall not apply to guarantee for paving or other work done for, or material furnished to, said city. No action shall at any time be taken contemplating the extension or renewal of franchises heretofore granted.

Amended 1891, p. 146.

2551. **Same—Contracts for.**—All grading, paving, macadamizing, or guttering of any streets, avenues, or alleys in the city, for which, or any part thereof, a special tax shall be levied, shall be done by contract with the lowest responsible bidder, to be determined by the council.

2552. **Same—Street intersections.**—The cost and expense of grading, filling, paving, culverting, curbing, guttering, or otherwise improving, constructing, or repairing streets, avenues, alleys, and sidewalks at their intersections, may be included in the special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the council.

2553. **Special sewer assessments.**—The council shall have power to lay off the city into suitable districts for the purpose of establishing a system of sewerage and drainage; to provide such system and regulate the construction, repairs, and use of sewers and drains, and of all proper house connections and branches, and to provide penalties for any obstruction of, or injury to, any sewer or part thereof, or for violation of such regulations.

2554. **Same—Assessments.**—Special taxes may be levied by the mayor and council for the purpose of paying the cost of constructing such sewers or drains within the city, such taxes to be levied upon the real estate lying and being within the sewerage districts in which such sewer or drain may be situated, to the extent of benefits to such property by reason of such improvement, the benefits to such property to be determined by the council, as in other cases of special assessments provided; and all taxes or assessments made for sewerage or draining purposes shall be levied and collected in the same manner as other special assessments, except sidewalk taxes, and shall be subject to the same penalty. And where sewers are constructed and any assessment to cover the cost thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and council, for the purpose of paying the cost of such improvement, are hereby authorized and empowered to make a re-assessment of such cost on the lots and real estate lying and being within the sewerage district in which any such sewer may be situated, to the extent of the benefits to such property by reason of such improvement, and such re-assessment shall be made substantially in the manner provided for making original assessments of like nature as herein provided, and any sums which may have been paid toward such improvement, upon any lots or real estate included in such re-assessment, shall be applied under the direction of the council to the credit of the persons and property on account of which the same was paid, and in case the credit shall exceed the sum re-assessed against such persons and property as herein provided for, the council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof; and the taxes re-assessed and not paid under a prior assessment shall be collected and enforced in the same manner as other special taxes, and shall be subject to the same penalty *Provided*, That no sewers shall be constructed unless the owners of a majority of the real estate in such district subject to assessment therefor shall first petition therefor.

2555. **Special assessment, how made—When due.**—Special assessments or taxes made or levied to pay for local improvements, except for sidewalks, shall be made and assessed in the following manner: *First*—Such assessment shall be made by the council at any meeting by a resolution stating the cost of the construction or repairs of the said improvement or work, and the benefit accruing to the property in the district to be taxed and the benefit to each separate piece of property taxed, which, with the vote thereon by yeas and nays, shall be recorded in a book provided for that purpose. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some newspaper published and of general circulation in said city at least ten days before the same shall be held. After such assessment the council shall sit as a board of equalization, as provided in section 50 of this act [2532]; *Provided*, That no property shall be taxed for an amount exceeding the special benefit accruing thereto by reason of such improvement, and if the aggregate amount of taxes which may be levied under the terms of this section shall be less than the total cost of such improvement as provided for in this act, then the excess of such cost shall be paid out of the general fund. Special taxes may be levied and collected as the improvements are completed in front of or along or upon the block or piece of ground, or at the time the improvement is entirely completed or otherwise, according as the council shall determine. No special tax or assessment which the mayor and council had or shall have acquired jurisdiction to make shall be void on account of any irregularity, defect, error, or informality in any proceeding under this act.

2556. **Proceedings of Officers—Warrant.**—When any special tax, except sidewalk tax, is levied, it shall be the duty of the city clerk to issue a certificate describing such lot or piece of ground by number and block, and stating the amount of special tax levied thereon, and the purpose for which such tax was levied, and when the same shall become due and delinquent, and he shall forthwith deliver a duplicate of such certificate to the city treasurer, who shall, without delay, give at least five days' notice through a newspaper published in the city, of the time when such tax will become delinquent; to every such certificate the city clerk shall append a warrant in the usual form, requiring such city treasurer to collect such special tax or taxes, by distress and sale of goods and chattels of the person, persons, or bodies corporate owing any such special tax or taxes, if the same be not paid before the time fixed for the same to become delinquent, and to make his return of such warrant with his doings thereon on or before the fifteenth day of July next thereafter.

2557. **Apportionment of assessment.**—It shall be sufficient in any case to describe the lot or piece of ground as the same is platted or recorded, although the same belong to several persons, but in case any lot or piece of ground belong to different persons, the owner of any part thereof may pay his portion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

2558. **Completion and acceptance of work.**—When any improvement mentioned in this act is completed according to contract, it shall be the duty of the city engineer to carefully inspect the same, and if the improvement is found to be properly done, such engineer shall accept the same, and forthwith report his acceptance thereof to the board of public works, who shall report the same to the council with recommendation that the same be approved or disapproved, and the city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the engineer may accept the same in sections from time to time, if found to be done according to contract, reporting his acceptance as in other cases.

2559. **Railways—Use of streets—Liability.**—All street railway companies now existing or hereafter created, in any city governed by this act, or that shall hereafter be organized thereunder, shall be required to pave or repave between and to one foot beyond their outer rails, or in case said railway use more than one track in any street, they shall pave between and to one foot beyond their outer rails where such company owns, at their own cost; *Provided*, That in lieu of the above and until January 1, 1891, such street railways shall only be required to pave between the rails of each track. Whenever any street shall be ordered paved or repaved by the mayor and council of such city, such paving or repaving shall be done at the same time, and shall be of the same material and character as the paving or repaving of the street upon which said railway track is located, unless other material be specially ordered by the board of public works. Such street railway companies shall be required to keep that portion of the street required by them to be paved in repair, using for said purpose the same material as the streets upon which the track is laid at the point of repair, or such other material as the board of public works may require and order upon streets in cities governed by this act. As streets are hereafter paved or repaved, street railway companies shall be required to lay, in the best approved manner, the strap or flat rail. The track of all railway companies, when located upon the streets or avenues of the city, shall be kept in repair and safe in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such tracks in repair, or for obstructing the streets or avenues of such city. For injuries to persons or property arising wholly from the failure of such company to keep their tracks in proper repair and from obstruction, such companies shall be liable and the city shall be exempt from liability. The words "street railway company," as used in this act, shall be taken to mean and include any persons, companies, corporations, or associations owning any street railway in any such city.

2560. **Special assessments.**—In the event of the refusal or neglect of such street railway companies to pave, repave, or repair when so directed by the mayor and council, upon the grading, paving, or repaving of any street upon which their track is laid, the mayor and council shall have power to pave, repave, or repair the same, and the cost and expense of such paving, repaving, or repairing may be collected by levy and sale of any real or personal property of said street railway company, the same as special taxes are collected. Special taxes for paying the cost of such paving, repaving, macadamizing, or repairing of any such street railway may be levied upon the track, including the ties, iron, road-bed, and right of way, side track and appurtenances, including buildings and real estate belonging to such company or person, and used for the purpose of such street railway business, all as one property, or upon such part of such tracks, appurtenances, and property as may be within the district paved, repaved, macadamized, or repaired, or any part thereof, and shall be a lien upon the property upon which levied from the time of the levy until satisfied. No mortgage, conveyance, pledge, transfer, or incumbrance of any such property of any such company or person, of any of its rolling stock or personal property, created or suffered by any such company, or party, after the time when any street or part thereof, upon which any such street railway shall have been laid, shall have been ordered paved, repaved, macadamized, or repaired, shall be made or suffered, except subject to the actual or prospective lien of such special taxes, whether actually levied or not, if such levy be in contemplation. The treasurer shall have the power and authority to sieze any personal property belonging to any such person or company for the satisfaction of any such special taxes when delinquent, and to sell the same upon the same advertisement and in the same manner as constables are now authorized to sell personal property upon execution at law, but failure to do so shall in no wise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate upon which such special taxes may be levied, may be sold. It shall also be competent for any such city to bring a civil action against any party owning or operating any such street railway and liable to pay said taxes, to recover the amount thereof, or any part thereof delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment and have execution therefor, and no property, real or personal, shall be exempt from any such execution; *Provided*, That real estate shall not be levied upon by execution, except by execution out of the district court on a judgment therein, or transcript of a judgment filed therein, as now provided by law. No property seized by the treasurer as hereinbefore provided, or upon any such execution, shall be taken from the officer holding the same on any order of replevin. No defense shall be allowed in any such civil action, except such as goes to the groundwork, equity, and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special tax shall be shown to be invalid, unjust, and inequitable, judgment shall be rendered for such amount as is just and equitable, and costs shall follow the judgment. It shall be competent for the mayor and council, upon the written application of any company, association, corporation, or person owning any such street railway, to provide that such special tax shall become delinqent and payable in installments, as in case of taxes levied upon abutting real estate as hereinbefore provided, but such application shall be taken and deemed a waiver of any and all objections to such taxes and to the validity thereof. Such application shall be made at or before the final levy of such taxes. The provisions of this act in regard to the levy, collection, and enforcement of special taxes to pay the cost of paving, repaving, macadamizing, or repairing of any such street railways shall apply to all such special taxes hereafter levied.

2561. **Board of public works.**—There shall be in each city a board ot public works which shall consist of three members, residents of said city, to be appointed by the mayor, by and with the assent of the council, before the first Monday of June following its organization under this act, for the term of one, two, and three years respectively, the term of office of each to be designated by the mayor, and annually thereafter there shall be appointed, as hereinbefore provided, one member, whose term of office shall be three years. The mayor, by and with the assent of the council, shall designate one of the members of such board to be the chairman thereof. The salary of the members of such board of public works shall be fixed by ordinance, and the salary of the chairman shall not exceed twelve hundred dollars per annum, and the salary of each of the other members shall not exceed two hundred dollars per annum. Each of the members of said board shall, before entering upon the discharge of his duties, take an oath to faithfully discharge the duties of his office, and enter into a bond with such city, with two or more good and sufficient sureties (to be approved by mayor and council) the bond of the chairman to be in the sum of fifteen thousand dollars ($15,000), and each of the others in the sum of ten thousand dollars ($10,000), conditioned for the faithful performance of his duties as member of the board of public works. The chairman of such board shall devote his entire time to the performance of his official duty, and no member of such board shall ever be directly or indirectly interested in any contract entered into by them on behalf of such city, nor shall they be interested, either directly or indirectly, in the purchase of any material to be used or applied in and about the uses and purposes contemplated by this act. It shall be the duty of the board of public works, and it shall have power, to make contracts on behalf of the city for the performance of all such work, and the erection of all such improvements as may be ordered by the mayor and council, but only with the approval of the mayor and council; to superintend the performance of all such work and the erection of all such improvements; to approve the estimates of the city engineer, which may be made from time to time, of the value of the work as the same may progress; to accept any work done or improvement made, when the same shall be fully completed according to contract, subject, however, to the approval of the mayor and council, and to perform such other duties as may be conferred upon them by ordinance. Any member of such board may at any time be removed from office by a vote of two-thirds of the members elected to the council, or by the mayor and a majority of the council, and the proceedings in that behalf shall be entered in the journal of the council.

2562. The mayor and council shall cause to be published semi-annually a **statement of** the receipts of the city and the sources thereof, and an itemized account of the expenditures and the **financial condition** of the city. It shall be the duty of the city clerk, on or before the first day of December, annually, to prepare separate **estimates** of all kinds of supplies, personal property and material, required for the use of the city during the ensuing year, and during the first week in December he shall publish a brief advertisement in one newspaper published in the city, stating the probable amount and kind of supplies, personal property and material required by such city during the year following the first day of January next ensuing, and inviting **bids** therefor, which bids shall be filed with said clerk on or before the first day of January. The board of public works shall, on or be-before the 10th day of January succeeding such advertisement, open said bids and recommend to the city council which, if any, of said bids should be accepted, the bid or bids recommended to be that or those of the best and lowest competent bidder who shall furnish a bond as hereinafter provided. The city council shall at its first meeting after the 10th of January aforesaid award a **contract** or contracts for such supplies, personal property and material to the best and lowest bidder or bidders competent under the statute; *Provided,* That the council may reject any and all bids. The successful bidder shall enter into a good and sufficient bond for the faithful performance of said contract with two good and sufficient sureties who shall justify in the same manner as sureties on official bonds, which bonds shall be approved by the city attorney, mayor, and city council. It shall be unlawful for any city officer to purchase any supplies, personal property or material from any person other than those to whom a contract has been awarded in case contracts have been awarded. Any officer of the city who shall violate the provision shall, upon conviction, be fined in the sum of fifty dollars ($50) and be committed until such fine is paid.

Amended 1891, p. 155.

2563. **Witnesses.**—The council or any committee of the members thereof shall have power to compel the attendance of witnesses for the investigation of matters that may come before them, and the presiding officer of the council or chairman of such committee for the time being may administer the requisite oaths, and such council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

2564. **County jail.**—Any city shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordinances of the city, but it shall be liable to the county for the cost of keeping such prisoners. The city shall not pay to exceed fifteen cents for each meal furnished prisoners, and fifteen cents for lodging.

2565. The mayor and council shall have **power to borrow money** and pledge the credit and property of the city upon its negotiable bonds or otherwise, to an amount not exceeding in the aggregate one hundred thousand dollars ($100,000), additional to all bonds issued for said purpose heretofore, for the purpose of constructing or aiding in the construction of a system of **sewerage** or extensions thereof, authority therefor having first been obtained by a majority vote of the people at an election upon a proposition submitted in the manner provided by law for the submission of propositions to aid in the construction of railroads and other works or* internal improvement, and to borrow money and to pledge the property and credit of the city in the manner aforesaid, and upon being authorized as aforesaid, to an amount not exceeding two hundred thousand dollars ($200,000), additional to all other bonds heretofore issued, for the purpose of constructing, maintaining, and operating a system of **water-works** on* additions thereto or extensions thereof, for said city. *Provided*, That before submitting the question to the electors of said city, as to issuing bonds for either sewers or waterworks, or additions thereto or extensions thereof, the council shall first determine and spread upon its records in what manner and to what extent such additions or extensions shall be made, and where the sale shall be located, and shall also procure a detailed estimate, by the city engineer, of the probable cost thereof, and no change in any material manner shall be made therein after the voting of the bonds proposed to be issued to construct the same, unless such change shall be first approved by a vote of the electors of said city.. *And provided further*, that cities governed by this act are hereby authorized to borrow money on their negotiable **bonds** to an amount not exceeding twenty-five thousand dollars ($25,000) for the purpose of purchasing and improving a park or **parks** for such city; *And provided*, The council shall first determine and spread upon its record a description of the land proposed to be bought for a park, and that authority therefor shall first be obtained by a vote of the electors of said city, the proposition therefor having been submitted to such electors, in the manner hereinbefore mentioned, as to voting bonds for water-works and sewers. *And provided further*, That if said question is submitted at a special election, it shall require, to carry the same, a majority of all the votes cast at said election, and a number of votes equal to a majority of the vote cast in said city at the last general election; and if submitted at a general election it shall require, to carry the same, a majority of all the votes at such election.

Amended 1889, p. 156.

2566. **Same—Water-works.**—When a system of water-works shall have been adopted and the people shall have voted to borrow money to aid in their construction as aforesaid, the mayor and council may erect, construct, and maintain such system of water-works, either within or without the corporate limits of the city, and make all needful rules and regulations concerning the use of such water-works, and to do all acts necessary for the construction, completion, and management and control of the same, not inconsistent with this act, including the taking of private property for public use for the construction and operation of the same, compensation to be ascertained and made therefor in the manner provided by law for acquiring the right of way and depot grounds for railway companies by the exercise of the right of eminent domain.

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*So in original.

2567. **Same—Contracts.**—In case such aid shall not be voted by the people in the manner aforesaid, or in case the system of water-works shall prove inadequate for the needs of the city, both public and private, then the mayor and council may contract with and procure individuals or corporations to construct and maintain a system of water-works in such city for any time not exceeding twenty years from the date of the contract, and with a reservation to the city of the right to purchase such water works at any time after the lapse of ten years from the date of the contract, upon payment to such individuals or corporation of any amount to be determined from the contract, not exceeding the cost of construction of such water-works; in other respects such contracts may be upon such terms as may be agreed upon by a two-thirds vote of the mayor and council, entered upon the minutes; *Provided,* That no such contract shall be made unless authorized by a majority vote of the legal voters at a special election called for such purpose.

2568. No **bonds** issued by the city for any purpose shall draw **interest** at a greater rate than six (6) per cent per annum, and no bonds shall be for less than par or face value, and all bonds shall be **redeemable** at the option of the city at any time after ten years from their date; and that not more than ten (10) per cent of any issue of bonds shall fall due in any one year, and the same per cent yearly thereafter until all of the bonds of the issue become due; *Providing,* There shall be no tax levied to pay more than the interest upon such bonds until the year before they become due, and then only so much as is needed to meet the bonds maturing the year after.

Amended 1891, p. 162.

2569. **Water commissioner.**—Before the mayor and council shall enter upon the construction of any system of water-works a water commissioner shall be appointed, who shall give bonds in not less than the sum of five thousand (5,000) dollars. No member of the council or the mayor shall be eligible to the office of water commissioner during the time for which he shall be elected.

2570. **Same—Duties.**—Such water commissioner, under the direction and supervision of the mayor and council, shall have control of such system of water-works, and of the erection and construction of the same, subject to the general management and approval of the board of public works, fixing the rates within such limits as may be prescribed by ordinance, to be paid by the inhabitants of the city for the use of water, water meters and hydrants. It shall be his duty to collect all moneys receivable by the city on account of said system of water-works and to faithfully account for and pay the same over to the treasurer at the end of each and every month, taking his receipt therefor in duplicate, and filing one of the same with the city clerk, to make a detailed report to the council at least once in three (3) months, of the condition of said water system, and of all mains, pipes, hydrants, reservoirs, and machinery, and recommending such improvements and repairs and extensions thereof as he may think proper, and showing the amount of the receipts and expenditures thereof for the preceding three (3) months, and no bill or claim for any work or material done or furnished for said system of water-works shall be paid or allowed in whole or in part, except as the same shall have been first approved by said water commissioner and the water committee of the council. Said water commissioner shall perform such other duties as may be required of him by ordinance.

2571. **Tax for sewerage and water-works.**—When any bond shall have been issued by the city for the purpose of constructing or aiding in the construction of a system of waterworks or a system of sewerage, there shall thereafter be levied annually upon all of the taxable property of said city a tax of not exceeding one mill for every twenty thousand dollars so issued, which shall be known as the water-works tax, or sewerage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the water-works, and from the payment and collection of water rents and rates of assessment, shall first be applied to the payment of the current expenses of the water-works and interest on borrowed money and bonds issued for their construction, and the surplus, if any, shall be used for the extension of such system, or retained as a sinking fund for the payment of such loan or bonds at maturity.

2572. The **excise board** shall have the exclusive **control** of the licensing and regulation of the sale of malt, spirituous, vinous or intoxicating **liquors** in such city, and for that purpose shall hold a public session at least once each month, at the council chamber in said city, and a record of its proceedings shall be made and kept as a public record by the city clerk, who shall be clerk of said board. A majority of such board shall constitute a quorum. The excise board may license, restrain, regulate or prohibit the selling or giving away of malt, spirituous or vinous, mixed or fermented, intoxicating liquors in said city, the license not to extend beyond the municipal year for which it shall be granted, and to determine the amount to be paid for such license not less than the minimum sum required by any general law upon the subject; *Provided*, That special permits may be granted to druggists for the sale of liquors for medicinal and mechanical purposes; *And provided further*, That all such licenses, except druggists, shall be required to give bonds in all respects, and they and their sureties shall be liable on such bond in all respects, as in the case of persons to whom licenses for the sale of intoxicating liquors are or may be granted by the county board, and all the restrictions, regulations, forfeitures, and penalities provided by law respecting the sale of liquors by persons licensed therefor by the county board, shall apply and govern all persons (except druggists) licensed by virtue of this section, and any person selling or giving away in said city any liquor of the description mentioned in this section, without first having complied with such regulations, and procured a license or permit therefor, or who shall violate any of the rules and regulations established by such excise board and governing the sale of such liquor, shall on conviction thereof be fined in any sum fixed by such rule, not more than two hundred dollars ($200) for each offense, and be committed to the city jail until such fines and costs are paid; *Provided*, That any permits issued to a druggist may be revoked by the excise board at pleasure; *And further*, That any license issued by the excise board for any purpose mentioned in this section shall and must be revoked by the excise board upon conviction of the licensee of any violation of any law or ordinance or regulation pertaining to the sale of any such liquors; and proceedings of error or appeal taken to review such judgment or conviction shall in nowise affect or prevent the revocation of such license. The excise board shall also make all needful rules and regulations not inconsistent with the law of this state for the control of places at which malt, spirituous, vinous or intoxicating liquors may be sold in said city; and such rules and regulations, when adopted by said board, and published in a daily newspaper, published and of general circulation in said city, shall have like force and effect as ordinances of said city adopted by city council thereof, and shall be proved in like manner. The excise board when in session shall have the same **power to issue subpœnas** and compel the attendance of witnesses, and to compel them to testify concerning matter pending before them, as a justice of the peace has on an examination before him; and the president of the board or presiding member for the time being, shall have the same power as such justice to administer oaths and affirmations. All subpœnas, commitments and other processes, shall be signed by the president or presiding officer for the time being of the board, and countersigned by the city clerk. The excise board shall have power, and it shall be the duty of said board, to appoint a chief of police and such other officers and policemen, to the extent that funds may be provided by the mayor and council to pay their salaries, as may be necessary for the protection and efficiency of the police of the city, and as may be necessary to protect citizens and property and maintain peace and good order; *Provided*, That the number of policemen shall be determined by the excise and police board shall not exceed more than one to every twenty-five hundred of population. The chief of police and all other police officers and policemen shall be subject to removal by the mayor whenever the said mayor shall consider and declare such removal necessary for the proper management or discipline or the more effective working or service of the police department.

Amended 1891, p. 158.

2573. **Payment of taxes.**—All taxes levied for the purpose of raising money to pay interest or to create a sinking fund for the payment of the principal or any funded or bonded debt of the city shall be payable in money only, and except as otherwise expressly provided, no moneys so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which they shall have been raised; *Provided*, That such sinking fund may, under the direction of the mayor and council, be invested in any of the under-due bonds issued by the city, provided they can be procured by the treasurer at such rate or premiums as shall be prescribed by ordinance; *And provided further*, That any due or overdue coupon or bond shall be a sufficient warrant or order for the payment of the same out of any fund specifically created for that purpose, without any further order or allowance by the mayor or council.

2574. **Printers' fees.**—The mayor or council shall not allow or pay for the printing of any notice, advertisement, or publication in any newspaper, any greater sum or rate than twenty-five cents per square of unleaded nonpareil type; and such bill shall first be audited by the city clerk.

Does not empower any officer to make contracts for printing; hence, such work may be recovered for by a corporation, though one of its stockholders is a councilman. **29**, 149 (45 N. W., 245).

2575. **Special engineer.**—The mayor and council may, whenever they deem it expedient, employ a special engineer to make or assist in making any particular estimate or survey, and any estimate or survey made by such special engineer shall have the same validity, and serve in all respects as though the same had been made by the city engineer.

2576. **Police judge—Jurisdiction.**—The police judge shall have exclusive jurisdiction over, and it shall be his duty to hear and determine all offenses against the ordinances of the city; he shall also have jurisdiction, concurrent with justices of the peace and the county court, of misdemeanors under the laws of the state, arising within the limits of the city, when the fine which may be imposed does not exceed two hundred dollars ($200), or imprisonment for three months; and he shall also have jurisdiction for the examination of offenders against the laws of the state for offenses arising within the city limits.

2577. **Same—Powers—Duties.**—The police judge shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear and determine any and all cases cognizable before him. No act shall be performed by him on Sunday, except to receive complaints, issue process, and take bail. He shall have power to enforce due obedience to all orders, rules, and judgments made by him. He shall have the same power as the district court in the issuance of warrants, subpœnas, or other process that may be necessary, and may fine or imprison for contempt offered to him while holding court, or to process issued by him, in the same manner and to the same extent as the district court.

2578. **Same—Appeal.**—In all cases before the police judge, arising under the ordinances of the city, wherein the fine assessed exceeds the sum of ten dollars ($10) or the imprisonment ten days, an appeal may be taken by the defendant to the district court in and for the county in which said city is situated; but no appeal shall be allowed unless such defendant shall, within ten days, enter into recognizance with sufficient secuities to be approved by the judge, conditioned for the payment of the fine and costs of appeal, if it should be determined against the appellant.

2579. On the trial of any case in the police court, it shall be the duty of any police judge to sign any **bill of exception** tendered to the court during the progress of such trial; *Provided*, The truth of the matter be fairly stated, and thereupon said exception shall be entered in the record of such trial. Any final conviction, sentence, or judgment of the police court may be examined into by the district court on **writ of error**, which may be allowed by such court or the judge thereof, for sufficient cause, and proceedings may be stayed as may be deemed reasonable; and the revising courts shall in such proceedings take judicial notice of all ordinances of the city.

2580. Whenever **complaint** shall be made to the police judge, on oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which the police judge has the jurisdiction, the police judge shall forthwith issue a **warrant** for the arrest of the offender, which warrant shall be served by the city marshal, policeman, sheriff, or a constable of the county, or some person specially appointed by the police judge for that purpose.

2581. All **fines** and **penalties** collected arising from a breach of ordinances of the city shall be paid to the city treasurer, and all fines and penalties collected, arising from misdemeanors under the laws of the state, shall be paid to the county treasurer, and the police judge shall report at the end of each calendar month a list of all cases instituted in his court under the city ordinances and the disposition thereof, with a statement of all the fines, penalties, and costs by him received, and shall at the end of each month pay to the city treasurer all fines by him received in cases arising under city ordinances, and in the event that the police judge shall fail to make report as herein provided, such failure and refusal for a period of ten days after demand made by the city council shall be cause for impeachment. The excess of fees and costs, after paying the salary of police judge, shall be paid into the police fund.

2582. When any person shall be brought before the police judge upon such warrant, it shall be his duty to **hear and determine** the complaint alleged against the defendant.

2583. Upon good cause the police judge may postpone the trial of a case to a day certain, in which case he shall require the defendant to enter into a **recognizance**, with sufficient security, conditioned that he will appear before said judge at the time and place appointed, then and there to answer the complaint alleged against him.

2584. In case of the **breach of** any **recognizance** entered into as aforesaid the same shall be certified to the district court of the proper county to be proceeded upon according to law; if in the progress of any trial before the said judge it shall appear that the accused ought to be put upon his trial for an **offense not cognizable** before said judge, he shall immediately stop all further proceedings before him and proceed as in other cases exclusively cognizable before the district court.

2585. It shall be the duty of said judge to **summon** all persons whose testimony may be deemed material as **witnesses** at the trial, and to enforce their attendance by atachment if necessary, and all witnesses shall receive the sum of fifty cents for each day's attendance.

2586. Cases in the **police court** for violation of city ordinances shall be tried and determined by the police judge without the intervention of a jury; cases of misdemeanor under the statutes of the state shall be tried by the police judge alone, unless the defendant demands a **jury**; if a jury be demanded, the case shall be tried by a jury, of six competent men, unless a smaller number be agreed to by the defendant, to be selected in the manner provided by law for selecting jurors in justice courts, and the trial of such cases before said police judge shall be conducted in all respects not herein otherwise provided, in like manner as criminal cases before justices of the peace. Jurors in the police court shall receive the same fees as jurors in justice courts, to be taxed as other costs are taxed in the case. And if, in any case of misdemeanor under the laws of the state, it shall appear to the police judge, by affidavit of the defendant, that he cannot have a fair and impartial trial before such police judge, the hearing of such a case may be transferred to some justice of the peace in such city. The police judge shall transmit or deliver the papers in such case, with a certified transcript of the proceedings before him, to such justice, who shall proceed therein and have the same jurisdiction, powers, and duties in all respects whatever as if such suit had been originally instituted before him; but before such change shall be allowed, all costs that have accrued in the police court and a fee of one dollar for transcript shall be paid by the defendant.

This is not in violation of constitution. **26**, 466 (42 N. W., 419).

2587. **Judgment.**—If the defendant be found guilty, the police judge shall declare and assess the punishment, and render judgment accordingly. It shall be part of the judgment that defendant stand committed until the judgment be complied with. Costs shall be taxed as in similar cases before justice of the peace; *Provided*, That a jail fee of fifty (50) cents and a fee of one (1) dollar for use of patrol wagon may be included in cases where a defendant was imprisoned before trial for one day or more, or where patrol wagon was used in making arrest; *Provided*, That in any prosecution for the violation of any ordinance, the defendant shall have the right to produce before said police judge one or more sureties, to the satisfaction of said judge, which said sureties shall, with the defendant, confess a judgment for the amount of the fine or penalty imposed, with costs of suit; and said judge shall enter said confession of judgment upon his docket, and render judgment accordingly in the name of the state of Nebraska against them for the amount of such fine and costs, and if said judgment be not paid within ninety days from the date of such confession and entering of judgment, said police judge shall issue execution and collect the amount of such fine, or penalty and costs, in the manner provided by law for collecting judgment by execution in justices' courts.

2588. **Discharge.**—Any defendant committed under the provisions of this act for misdemeanor arising under the laws of the state may be discharged in the same manner as if he had been committed by the county court.

2589. **Proceedings.**—In all cases not herein specially provided for, the process and proceedings before the judge shall be governed by laws regulating proceedings in justices' courts in criminal cases.

2590. **Undertaking.**—In all proceedings, trials, and hearings before the council based upon a complaint or information of any kind, where such information or complaint is not sustained before an appeal shall be taken, the complainant or informant shall enter into an undertaking in such sum as the mayor may fix, with sufficient sureties approved by the mayor, conditioned that he will pay all costs in case the decision of the council shall be sustained.

2591. **Continuance.**—When a trial shall be continued by the police judge it shall not be necessary to summon any witnesses who may be present at the continuance, but the judge shall verbally notify such witnesses as either party may require to attend before him to testify in the case on the day of trial, which verbal notice shall be as valid as a summons.

2592. **Challenges.**—In trials by a jury before the police judge, challenges shall be allowed in the same manner as in similiar cases before justices of the peace.

2593. **Punishment.**—Any person convicted before the judge of any **offense** under the ordinances of the city shall be punished by such fine and imprisonment as may be regulated by ordinance.

2594. **Working prisoner.**—Whenever the defendant is sentenced to imprisonment for the violation of a city ordinance, he shall be put to work for the benefit of the city, under the direction of the marshal, for the term of his imprisonment, and when committed for the non-payment of a fine or costs for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs one dollar and fifty cents ($1.50) per day for each day he shall work.

2595. **Vacancy in office.**—In case of a vacancy in the office of police judge by death, resignation, or otherwise, or in case of the absence, disability, or personal interest of said judge, such fact being shown by affidavit, the mayor shall on notice thereof appoint some justice of the peace, holding and exercising the duties of his office, within the corporate limits of the city, to act as police judge during such vacancy, absence, or disability of said police judge and until such vacancy is filled by appointment or election.

B. 10,000 to 25,000.

Secs. 2596 to 2711. "An act to incorporate cities of the first class having less than 25,000 and more than 8,000 inhabitants, and regulating their duties, powers, and government." 1889, p. 250. In force March 14. Amended 1891, pp. 162 and 164.

2596. **Cities of the first class.**—That all cities having less than twenty-five thousand (25,000) and more than ten thousand (10,000) inhabitants as ascertained and officially promulgated by the census and enumeration taken by authority of the laws of the United States in the year 1890, shall be governed by the provisions of this act, and [shall] be known as cities of the first class having less than twenty-five thousand (25,000) inhabitants.

Amended 1891, p, 163, by raising limit to 10,000.

2597. Whenever any city of the second class shall have attained a **population** of more than ten thousand (10,000) inhabitants, as ascertained and officially promulgated by the census return and enumeration taken under the authority of the United States, or under the authority of the state of Nebraska, the mayor of such city shall **certify** such fact to the governor, who shall by **proclamation** so declare, and thereafter such city shall be governed by the provisions of this act. And upon such proclamation being made by the governor each and every officer of such city shall within thirty (30) days thereafter qualify and give the bonds provided for by this act.

Amended 1891, 163.

2598. **How organized.**—The government of such city shall continue in authority from the date of such proclamation until the reorganization under this act. The mayor and council shall divide the city into not less than four wards, to take effect at the next annual municipal election.

2599. **Corporate limits.**—The corporate limits of such city shall remain as heretofore, and the mayor and council may by ordinance include therein all the territory contiguous or adjacent which has been by the act, authority, or acquiescence of the owners subdivided into parcels containing not more than five acres, and the mayor and council shall have power, by ordinance, to compel the owners of lands so brought within the corporate limits to lay out streets, ways, and alleys to conform and be continuous with the streets, ways, and alleys of such city (and they may vacate any public road heretofore established through such land), when necessary to secure regularity in the general system of its public ways.

2600. **Contiguous property.**—Land shall be deemed contiguous to such city, notwithstanding any stream or embankment, or any strip or parcel of land not more than two hundred (200) feet in width may lie between such land and the corporate limits of such city.

2601. **Additions.**—The proprietor or proprietors of any land within the corporate limits of any city of the first class, or contiguous to the same, may lay out said land into lots, blocks, streets, avenues, and alleys, and other grounds the same name of ——— addition to the city of ———, and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out and particularly describing the lots, blocks, streets, avenues, and alleys, and other grounds belonging to such addition; the lots must be designated by numbers, and streets, avenues and other grounds by name or numbers, and such plat shall be acknowledged before some officer authorized to take the acknowledgment of deeds, and have appended a survey, made by some competent surveyor, that he has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked, and when such map or plat is so made out, acknowledged and certified, and after being approved by the mayor and council, the same shall be **filed** and recorded in the office of the register of deeds of the county, and thereupon such plat shall be equivalent to a deed in fee simple to said city from the proprietor of all streets, avenues, alleys, public squares, parks, and commons, and of such portion of the land as is therein set apart for public and city use, or is dedicated to charitable, religious, or educational purposes, and all additions thus laid out shall remain a part of said city, and all additions now or hereafter laid out adjoining or contiguous to the said corporate limits shall be included within the same, and be and become thereupon a part of such city for all purposes whatsoever, and the inhabitants of such addition shall be entitled to all the rights and privileges, and subject to all the laws, ordinances, rules, and regulations of the city to which land is an addition; *Provided*, The mayor and council shall have power by ordinance to compel the owners of any such addition to lay out streets, avenues, and alleys so as to have the same correspond in width and direction, and be continuations of the streets, ways, and alleys in the city or additions thereto, contiguous to or near the proposed addition, and no addition shall have any validity, right or privileges as an addition unless the terms and conditions of such ordinance are complied with, and the plat thereof submitted to and approved by the mayor and council, and endorsed thereon.

2602. **Corporate name.**—The corporate name of each city organized under or governed by this act shall be the city of ———, and all process whatever affecting any such city shall be served upon the mayor, or acting mayor, or in the absence of both of said officers from the city, then upon the city clerk.

2603. **Rights reserved.**—No right of property accrued to any city, corporation, or person, under any law heretofore in force, shall be affected by this act, and all city ordinances now in force and not repugnant to the provisions of this act shall remain and continue in force until altered or repealed by the mayor and council. When any such city or town shall be incorporated under the provisions of this act, all its said trusts, rights, and privileges shall be transmitted to and vested in such latter corporation, and all actions heretofore commenced by or against any city or town which shall become a city governed under the provisions of this act shall be in no manner affected by this act, but all such actions shall be continued to final judgment and satisfaction as if this act had not been passed.

2604. **Powers.**—Each city governed by the provisions of this act shall be a body corporate and politic, and shall have power: *First*—To sue and be sued. *Second*—To purchase and hold real and personal property for the use of the city, and real estate sold for taxes. *Third*—To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interest of the city. *Fourth*—To make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate powers. *Fifth*—To exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and council of such city as hereinafter set forth; but they shall not have power to sell any real estate of the city unless authorized so to do by a vote of the majority of the electors of such city at a special election therefor; *Provided*, That upon the affirmative vote of three-fourths of all the members of the city council to be entered of record, such city may by ordinance direct the sale and conveyance of any such real estate which the city may have acquired at a sale for delinquent taxes, as herein provided, upon such terms as the council may deem best, without first submitting the question of such sale to a vote of the people.

2605. **Wards.**—Each city governed by this act shall be divided into not less than four wards, as compact in form and equal in population as may be, the boundaries of which shall be defined by ordinance. Each ward shall constitute an election district; *Provided*, That when any ward shall contain over five hundred (500) legal voters, the mayor and council may divide such ward into two or more election districts.

2606. **Precinct lines.**—Precinct lines in that part of any county, not under township organization, embraced within the corporate limits of any city governed by this act, shall correspond with the ward lines in such city, and such precinct shall correspond in number with the ward of the city, and be co-extensive with the same; *Provided*, That when a ward is divided into election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts; *And provided further*, That no justices of the peace or constable shall be elected in such precinct, and every such city shall constitute a district for the election of justices of the peace and constables, and in every such district there shall be elected two justices of the peace and two constables at the time provided by law for the election of such officers in other districts.

2607. **Elections—When held.**—The general city election in all cities governed by this act shall be held on the first Tuesday in April annually. The polls shall be opened at such place in each election district as may be designated by the mayor, or be fixed by ordinance, and shall be kept open between the hours of 9 o'clock A. M. and 7 o'clock P. M., and no longer.

2608. **Election of officers.**—At the first annual election after such proclamation by the governor, a mayor, treasurer, clerk, and police judge shall be elected by a plurality of votes for the term of two years, and biennially thereafter. The **council** of each city governed by this act **shall consist** of one member for each ward and an equal number from the city at large, who shall be qualified electors of said city and a resident freeholder to the amount of five hundred dollars ($500). Each **councilman,** before entering upon the duties of his office, shall be required to give a **bond** to the city, with two or more good and sufficient sureties, who shall each justify that he is worth at least two thousand dollars over and above all debts and exemptions; such bond shall be in the sum of two thousand dollars and shall be conditioned for the faithful discharge of duties of the councilman giving the same, and shall be further conditioned that if said councilman shall vote for any expenditure or appropriation of money, or the creation of any **liability** in excess of the amount allowed by law, that such councilman and the sureties signing said bond shall be liable thereon. Said bond shall be filed with and approved by the mayor, and any liability sought to be incurred, or debt created in excess of the amount limited or authorized by law, shall be taken and held by every court of the state as the joint and several liability and obligation of the councilmen voting for and the mayor approving the same, and not the debt, liability, or obligation of the city, and voting for, or approving of such liability, obligation or debt, shall be conclusive evidence of malfeasance in office, and for which such councilman or mayor may be removed from his office. At the first annual election after such proclamation by the governor there shall be elected the number of councilmen equal to the number of wards in said city, to be designated councilmen at large, who shall serve for the term of two years. At the next annual election there shall be elected a councilman from each ward who shall serve for the term of two years. The councilman at large and the ward councilman shall constitute the city council, the councilman at large and the ward councilman being elected on alternate years. Ward councilmen shall be residents of the ward from which they may be elected. All councilmen's term of office shall commence the first Tuesday succeeding the day of election, upon which day they shall assemble together and organize the city council. In cities hereafter organized under this act, the councilman at large and the ward councilmen shall hold their offices as above provided, and shall be elected upon alternate years.

2609. **Appointive officers.**—The mayor may appoint an engineer, attorney, street commissioner, chief of fire department, and water commissioner, and may appoint three members of the board of public works, by and with the assent of the council, and any such officers may be removed at any time by a vote of the majority of all members of the council. All confirmation of officers by the council shall be made viva voce, and the concurrence of a like majority shall be required, and the vote by yeas and nays shall be recorded. The city marshall and such number of police as the council may authorize shall be appointed, and may be removed by the mayor at pleasure, and in case of emergency the mayor may appoint a necessary number of special police, who shall be removable at the pleasure of the mayor and council.

2610. **Elector's qualification.**—The qualification of electors in the several wards shall be the same as is required for electors under the laws of the state. At a meeting of the council on the first Monday after any city election, the **returns** shall be **canvassed,** and they shall cause the clerk to make out and deliver **certificates of election** to the persons found to be elected, and a neglect of any such officer to qualify within ten days after the delivery to him of such certificate shall be deemed a refusal to accept the office to which he may have been elected.

2611. **Council meetings.**—Regular meetings of the council shall be held at such times as may be fixed by ordinance, and special meetings whenever called by the mayor or any four councilmen. Two-thirds of all the members elected to the council shall constitute a quorum for the transaction of any business, but a less number may adjourn, from time to time, and compel the attendance of absent members.

2612. **Salaries.**—The salaries of all officers shall be fixed by ordinance not exceeding the following sums per year respectively. The mayor, five hundred (500) dollars per annum; treasurer, fees as hereinafter provided not to exceed five hundred (500) dollars per annum; each councilman, three hundred (300) dollars per annum; clerk, seven hundred and twenty (720) dollars per annum, including the making of the tax list; marshal, sixty-five dollars, and policemen sixty dollars per month; city engineer, five dollars per day for each day actually employed; street commissioner, sixty dollars per month for actual service; city attorney, six hundred dollars per annum; water commissioner eight hundred dollars per annum, and the chairman of the board of public works, six hundred dollars per annum, and the other two members of said board one hundred dollars per annum. The foregoing to be construed as limitations and not fixed salaries; all other officers and employees of the city, except police judge, shall receive such compensation as the mayor and councilmen shall fix at the time of their employment.

2613. The **police judge** shall receive a salary not to exceed the sum of one thousand dollars ($1,000) per annum. He shall keep a fee book and shall collect the same fees as a justice of the peace for similar services, and pay the same into the treasury on the first day of each month.

2614. All **officers** shall be qualified electors of the city, entitled to vote at all elections therein.

2615. **Mayor's power and duties.**—The mayor shall preside at all the meetings of the city council, and shall have a casting vote when the council is equally divided, except as otherwise herein provided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and of this act are complied with, and may administer oaths, and shall sign the commissions and appointments of all the officers appointed in the city.

2616. **Same—Veto.**—The mayor shall have the power to sign or veto any ordinance passed by the city council, and to sign or veto any order, by-law, resolution, award of, or vote to enter into any contract, or the allowance of any claim; *Provided*, That any ordinance, order, by-law, resolution, award, or vote to enter into any contract, or the allowance of any claim, vetoed by the mayor, may be passed over his veto by a vote of two-thirds of all the members elected to the council, notwithstanding his veto, and should the mayor neglect or refuse to sign any ordinance and return the same with his objections in writing at the next regular meeting of the council, the same shall become a law without his signature; *Provided*, That the mayor may veto any item or items of any appropriation bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the council over the veto as in other cases.

2617. **Message.**—He shall, from time to time, communicate to the city council such information, and recommend such measures as in his opinion may tend to the improvement of the finances of the city, the police, health, comfort, and general prosperity of the city, and may have such jurisdiction as may be invested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of health, or quarantine ordinance, and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation, within one-half mile of the corporate limits of said city.

2618. **Vacancy.**—In case of any vacancy in the office of mayor, or in case of his absence or disability, the president of the council shall exercise the powers and duties of the office of mayor until such vacancy shall be filled or such disability removed, or in case of temporary absence, until the mayor returns, and perform such other duties as may be required by law. The mayor may require any male inhabitant of the city between the ages of eighteen and fifty to aid in enforcing the laws.

2619. **May remit fines.**—The mayor shall have power after conviction to remit fines and forfeitures, to grant reprieves and pardons, for all offenses arising under the ordinances of the city.

2620. **Clerks—Duties of.**—The city clerk shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council; he shall also keep a record of all outstanding bonds against the city, showing the number and amount of each, for and to whom the said bonds were issued, and when any bonds are purchased, or paid, or cancelled, said record shall show the fact, and in his annual report he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof; he shall also perform such other duties as may be required by the ordinances of the city. He shall also make at the end of each month a report showing the amount appropriated to each fund, and the whole amount of warrants drawn thereon, which shall be spread at large upon the records.

2621. **Treasurer—Duties of.**—The treasurer shall be required to give bonds in not less than fifty thousand dollars ($50,000), or he may be required to give bond in double the sum of money estimated by the council to be at any time in his hands, belonging to the city and school district, and shall be the custodian of all money belonging to the corporation; he shall keep a separate account of each fund or appropriation, and the debits and credits belonging thereto; he shall give every person paying money into the treasury a receipt therefor, specifying date of payment, and on what account paid; he shall also file copies of such receipts, except tax receipts, with his monthly reports; he shall at the end of each and every month, and as often as may be required, render an account to the city council, under oath, showing the state of the treasury at the date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him, which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office, and if said treasurer neglect or fail for the space of ten days from the end of each and every month to render his said account, his office may, by resolution of the mayor and council, be declared vacant, and the city council shall fill the vacancy by appointment until the next election for city officers. The treasurer may employ and appoint a delinquent tax collector, who shall be allowed a per centum upon his collections, to be fixed by the council, not to exceed the fees allowed by law to county treasurers for like service, and upon taxes collected by such delinquent tax collector the city treasurer shall receive no fees.

2622. **Attorney—Duties of.**—The city attorney shall be the legal advisor of the council and city officers; he shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the corporation, or that may be ordered by the council, and when requested shall attend meetings of the council, and give them his opinion upon any matters submitted to him, either orally or in writing, as may be required; *Provided,* That he shall not be required to prosecute complaints for offenses against the city ordinances in police court, except on the order of the mayor or council.

2623. **Engineer—Duties of.**—The city engineer shall make records of the minutes of his surveys and of all work done for the city, including sewers, extensions of water system, and accurately make such plats, sections, profiles, and maps as may be necessary in the prosecution of any public work, which shall be public records, and belong to the city and be turned over to his successor.

2624. **Same.**—The city engineer shall make estimates of the cost of labor and materials which may be done, or furnished by contract with the city, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, water-works, bridges, curbings, and gutters, and the improvement of streets, and erection and repair of buildings, and shall perform such other duties as the council may require. Before the city council shall make any contract for building water-works or any part thereof, or any sewers, bridges, or work on the streets, or any other work or improvement to cost over two hundred dollars ($200), an estimate of the cost thereof shall be made by the city engineer and submitted to the council, and no contract shall be entered into for any work or improvement for a price exceeding such estimate, and in advertising for bids for any such work the council shall cause the amount of such estimate to be published therewith. Such advertisement shall be at least ten days in some daily newspaper of general circulation published in the city.

2625. **Marshal—Duties.**—The marshal shall have the immediate superintendence of the police, and the marshal and policemen shall have power, and it shall be their duty, to arrest all offenders against the laws of the state, or of the city, by day or by night, in the same manner as a sheriff or constable, and keep them in the city prison or other place, to prevent their escape until a trial or examination may be had before a proper officer, and shall have the same powers as sheriffs and constables in relation to all criminal matters, and all process issued by the police judge.

2626. **Street commissioner.**—The street commissioner shall be subject to the orders of the mayor and council, have general charge, direction, and control of all work in the streets, sidewalks, culverts, and bridges of the city, except matters in charge of the board of public works, and shall perform such other duties as the council may require.

2627. **Emoluments of officers.**—The emoluments of no officer whose election or appointment is required by this act shall be increased or diminished during the term for which he was elected or appointed, and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments have been increased.

2628. **Accounts of officers.**—The mayor or council shall have power, when he or they deem it necessary, to require any officer of the city to exhibit his accounts, or other papers, and make reports to the council in writing, touching any subject or matter they may require pertaining to his office.

2629. **Contract—Resolution.**—On the passage or adoption of every resolution or order to enter into a contract, or accepting of work done under contract, by the mayor or council, the yeas and nays shall be called and recorded, and to pass or adopt any by-laws, ordinance, or any such resolution, or order, a concurrence of a majority of the whole number of the members elected to the council shall be required.

2630. **Streets—Care of.**—The mayor and council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the city, and shall cause the same to be kept open and in repair and free from nuisances.

2631. **Markets.**—No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner bringing produce or provisions to any of the markets in the city, or standing in or occupying a place in any of the market places of the city, or in the streets contiguous thereto on market days and evenings previous thereto; but the mayor and council shall have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, to prescribe the kind and description of articles which may be sold, and the stand or places to be occupied by the vendors, and may authorize the immediate seizure, and arrest or removal from the markets, of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

2632. **Appropriations.**—All **ordinances** and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council. Ordinances of a general or permanent nature shall be fully and distinctly read on three different days unless three-fourths of the council shall dispense with the rules. Ordinances shall contain no subject which shall not be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

2633. **Claims.**—All claims against the city must be presented in writing with a full account of the items verified by the oath of the claimant, or his agent, that the same is correct, reasonable, and just, and no claim shall be audited or allowed unless presented and verified, as provided for in this section; *Provided*, No costs shall be recovered against such city in any action brought against it for any unliquidated claim, including claims for personal injury sustained by reason of the negligence of such city, which has not been presented to the city council to be audited; nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest thereon; *Provided further*, That all actions against such city for injury or damage to person or property hereafter sustained by reason of the negligence of such city must be brought within six months from the date of sustaining the same. And to maintain such action it shall be necessary that the party file in the office of the city clerk, within three months from the date of the injury or damage complained of, a statement giving full name and the time, place, nature, and circumstances of the injury or damage complained of.

This limitation held inoperative, as in conflict with the general limitation law and not included in title of act. 23, 877. See, also, 29, 379 (45 N. W., 694).

2634. **Taxes—Levy.**—The mayor and council shall have power to levy and collect taxes for general purposes, not exceeding ten mills on the dollar valuation in any one year, on all the real estate and personal property within the corporate limits of the city, taxable according to the laws of this state, and such tax for the interest and sinking fund of the bonded debt as may be requisite and authorized by law. And the mayor and council shall also have power to levy and collect on all such property, for the sole and exclusive purpose of maintaining and paying the police department of said city, not to exceed five (5) mills on the dollar valuation in any one year; taxes levied for said purposes to constitute a special fund therefor, and shall also have power to levy and collect on all such property, for the sole and exclusive purpose of maintaining and paying the fire department of any such city, not to exceed three (3) mills on the dollar valuation in any one year; taxes levied for said purpose to constitute a special fund therefor. The valuation of such property to be taken from the assessment roll of the proper county, and it shall be the duty of the county clerk to permit the city clerk to make out from the assessment rolls of the county an assessment roll for the city of all property liable to taxation as above specified, which the city clerk shall complete on or before the third Monday in June of each year, unless otherwise ordered by the council; upon the completion of such copy of said assessment roll the city clerk shall add to said roll any and all real estate in said city which is exempt from taxation for general purposes, and assess the same as near as may be to correspond with the assessed value of like property on said county roll, and enter the same in a separate column for the purpose of special assessment in said city, authorized by law, and shall be subject to equalization by the city council, the same as other property, when sitting as a board of equalization.

2635. **Equalization.**—The council shall have power to act as a board of equalization for the city to equalize all assessments and to correct any error in the listing or valuation of property, and to supply any omissions in the same, and shall have the same power as county commissioners have in similar cases, and when such roll is completed the council shall hold a session of not less than five days as a board of equalization, giving **notice** of such sitting at least six days prior thereto through a newspaper published and of general circulation in the city. The mayor and council shall make the annual levy at the first regular meeting of the city council in July of each year. And in all cases before any special taxes that may be levied in proportion to the foot front shall be finally levied, it shall be the duty of the council to sit as a board of equalization for the purpose of equalizing any such proposed levy, special taxes, or assessment, and correcting any error therein, giving notice of sitting in the same manner as above provided in this section, stating in such notice the purpose for which it will sit, and it shall continue such session not less than two days, and at such session it shall hear all complaints that the owners of property so to be assessed and taxed may make, and it shall be its duty to equalize any such assessments, by correcting any errors therein, and thereupon said assessments and special taxes shall be finally levid; *Provided*, That no complaint that another is assessed too low shall be acted upon, and no assessment shall be increased until the person so assessed shall be notified of such complaint or of such proposed increased assessment, if a resident of the city.

2636. **Tax list—Correction.**—As soon as the assessment roll shall have been equalized, and the annual levy made thereon, the city clerk shall immediately make out a tax list, which shall be as nearly as practicable in the form prescribed by law for the tax list to be furnished county treasurers, and he shall deliver such tax list to the city treasurer on or before the first day of October next, after the date of the levy in each year; errors in the name of persons assessed may be correted by the treasurer and the tax collected from the person intended, and in case the treasurer find that any land has been omitted in the assessment, he shall report that fact to the council, who may assess the same and direct the correction of the tax list

2637. **Taxes—Delinquent.**—On the first day of January next succeeding the levy thereof, all unpaid city taxes shall be and become delinquent, and shall thereafter draw interest at the rate of one per centum per month, which interest shall be collected the same as the tax so due, and it shall be the duty of the city treasurer to proceed as soon as practicable, after the first day of January, to make such delinquent tax out of the personal property of such delinquent if any such property can be found within the city; no demand of taxes shall be necessary, but it shall be the duty of every person owing any municipal tax or taxes in such city to attend at the treasurer's office and pay the same.

2638. **Tax warrant.**—To each tax list so delivered, a warrant under the hand of the city clerk shall be annexed, to be substantially in the following form, to-wit: "In the name and by the authority of the state of Nebraska: To ———, city treasurer of the city of ———, in Nebraska: You are hereby commanded to collect from each of the persons and corporations named in the annexed tax list, and of the owners of real estate described therein, the taxes set down in such list opposite their respective names, and the several parcels of lands described therein; and in case any person or corporation upon whom any such tax or sum is imposed, or who by law is required to pay the same, shall refuse or neglect to pay the full amount thereof before the first day of January next, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed as are required by law to pay such tax. Given under my hand and official seal this —— day of ———, A. D. 18—, ——, city clerk of the city of ———."

2639. **Treasurer—Power of.**—Such warrants shall fully authorize and empower the city treasurer to levy on any personal property belonging to any such delinquent, and collect therefrom any municipal taxes then due from such delinquent, and such warrant shall be a full and complete justification to the treasurer in any action brought to recover damages or costs for any act or proceedings by him done or take in conformity with the commands thereof.

2640. **Same.**—The powers, rights, duties, and the proceedings of the city treasurer in cities governed by this act and of such deputies as he may appoint shall in all respects, as far as applicable, and except as herein otherwise provided, be the same in respect to the collection of municipal taxes and assessments as those of county treasurers in like cases with reference to the collection of county taxes; and he shall be paid fees of one and one-half per centum of all taxes collected by him, not to exceed five hundred (500) dollars per year as before limited.

2641. **Taxes—Property liable.**—All municipal taxes shall be collected from the personal property of the person, persons, or body corporate owning the same, whenever the same is practicable, and whenever personal property cannot be found belonging to any such person, persons, or bodies corporate, then, and in that case, all such delinquent municipal taxes as may have been levied on any real estate within such city shall be collected by the county treasurer of the county in which such city is situated by sale of such real estate, the same as in case of delinquent county taxes.

2642. **Same—Ordinances for collecting.**—The mayor and council shall have full power and authority to pass any and all ordinances not inconsistent with the laws of this state that they may deem necessary to secure the speedy and thorough collection of all municipal taxes and special assessments.

2643. **Same—How paid.**—All municipal taxes and all local special assessments in such city shall be paid in cash and warrants of said city, drawn on the fund for which the same is offered; *Provided*, That coupons on any bonds of such city shall be received for any tax or assessments.

2644. **Same—Realty—Sale of.**—It shall be the duty of the city treasurer, on or before the fifteenth day of September of each year, to make out a complete delinquent list of all lots, lands, or parcels of real estate, the taxes and assessments on which for the previous year remain uncollected at that time, with the amount of such taxes or assessments, together with the penalty and interest due from each lot or parcel of real estate set opposite the same; arranging the several lots, lands, or parcels of real estate in such list in the order that they may appear on the tax list, stating also in each case the purpose for which tax or assessment was levied. The county treasurer shall receive such delinquent list and advertise the real estate therein described for sale for such delinquent taxes or assessments at the same time he advertises the sale of real estate for delinquent county taxes, by adding the amount of such delinquent city taxes and assessments to the amount of delinquent state, county, and other taxes, and he shall sell such lots, lands, or parcels of real estate for the purpose of paying all such delinquent taxes and assessments, and shall credit such city for the amount of taxes or assessments so collected, which shall be subject to the order of the treasurer of such city in the sale of any real estate as above provided for; and in the giving of certificates of sale and tax deeds therefor the county treasurer shall proceed in the same manner as is or may be provided by law for his proceedings in the sale of real estate for delinquent county taxes, and with like power and authority; and the real estate so sold may be redeemed within the time and upon the same terms and conditions in every respect as is or may be provided by law for the redemption of real estate sold for delinquent county taxes; *Provided*, That under this act the county treasurer shall be authorized to collect only by sale of real estate; *And provided further*, It shall be the duty of the city treasurer upon any taxes being collected by him after the delinquent tax list shall have been delivered to the county treasurer to forthwith notify the county treasurer of such collection that the same may be cancelled on the delinquent tax list; *Provided further*, That the failure, neglect, or refusal of the city treasurer to make the tax assessed against any real estate by distress and sale of the personal property of the owners thereof, shall not in any wise affect or invalidate the sale of such lands for such tax.

2645. **Tax liens.**—Special assessments upon real estate shall be a lien from the date of levy, and municipal taxes thereon from the date fixed by the general revenue law, which lien shall be perpetual; and in case of sale of any property for such tax or special assessment the same shall be governed by the general revenue act, and the rights and limitations shall be the same as in other tax sales, except as provided in this act.

2646. **Same—Irregularities.**—Irregularities in making assessments and returns thereof, in the equalization of assessments, and in the mode and manner of advertising the sale of any property, shall not invalidate or affect the sale thereof, when advertised and sold for delinquent city taxes or special assessments as herein provided; nor shall the sale of any real estate for any such taxes or assessments be invalid on account of such real estate having been listed in any other name than that of the rightful owner.

2647. **Same—Relevy—Irregularities.**—The foregoing provisions shall apply to all taxes now due or heretofore delinquent, or that may hereafter become due or delinquent. Whenever any municipal tax or taxes levied for any former years shall remain uncollected because of any defect, error, or irregularity in either the power or manner of making the levy thereof, it shall be lawful for the mayor and council of such city to again levy the tax upon the property so delinquent in lieu of such former tax or taxes, and at the same rate and upon the same assessment as such former tax or taxes were levied, and such tax or taxes shall be inserted in the tax list and shall be collected in the same manner as other general taxes are. The city council may at any time correct any error or defect, or supply any omission in the assessment or listing of any property subject to municipal tax made for the purpose of taxation for the then current fiscal year, and may require any and all persons to appear and answer under oath as to their possession and control of personal property subject to municipal taxation. These provisions shall apply equally to general municipal taxes and to special assessments, as far as the same may be applicable, unless otherwise provided in the ordinance levying the same. Special taxes and assessments shall, except deferred yearly installments for paving purposes, be deemed delinquent if not paid in fifty days after the passage and approval of the ordinance levying the same in each case, and a penalty of five (5) per cent together with interest at the rate of one (1) per cent a month shall be paid on all delinquent special taxes or assessments from the time the same shall become delinquent.

2648. **Same—County treasurer.**—The treasurer of the county shall pay over on demand to the treasurer of any city all money received by him arising from taxes levied belonging to such city, together with all money collected as a tax on dogs from the residents of such corporation, for the use of the general fund therein, and also all the moneys arising from the levying of road tax against or upon property in said city, which shall be expended upon the streets and grades in said city.

2649. **Treasurer's books.**—The city treasurer shall receive all moneys belonging to the city, and the clerk and treasurer shall keep their books and accounts in such a manner as the mayor and council shall prescribe. The treasurer shall keep a daily cash book, which shall be footed and balanced daily. And such books and accounts shall always be subject to inspection of the mayor, members of the council, and such other persons as they may designate.

2650. **Warrants.**—Upon allowance of claims by the council the order for the payment shall specify the particular fund or appropriation out of which they are payable as specified in the annual appropriation bill to be passed in the manner hereinafter provided, and no order or warrant shall be drawn in excess of eighty-five per centum of the current levy for the purpose for which it was drawn unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment, and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn. All warrants drawn upon the treasury must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn; each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn and the amount already expended of such fund.

2651. **Public moneys—Removal of the treasurer.**—The treasurer shall keep all moneys in his hands belonging to the city separate and distinct from his own moneys, and he is hereby expressly prohibited from using, either directly or indirectly, the corporation money or warrants in his custody and keeping for his own use and benefit, or that of any other person or persons whomsoever. Any violation of this provision shall subject him to immediate removal from office by the city council, who are hereby authorized to declare such office vacant; and the city council shall appoint a successor, who shall hold his office for the remainder of the term unexpired of such officer so removed.

2652. **Treasurer—Annual report.**—The treasurer shall report to the mayor and council annually, and oftener if required, at such time as may be prescribed by ordinance, a full and detailed account of all receipts and expenditures during the preceding fiscal year, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid, and the person to whom paid, specifying also the time of payment, and all such warrants shall be examined by the finance committee at the time of making such annual report.

2653. **Same—Diversion.**—Each and every fund created by this act shall be strictly devoted to the purpose for which it was created and shall not be diverted therefrom, and any member of the city council voting to so divert the money in any fund shall be liable to suit for damages for the amount of funds so diverted.

2654. **Same—Special funds.**—All moneys received in any special assessment shall be held by the treasurer as special fund to be applied to the payment of the improvement for which the assessment was made; and such money shall be used for no other purpose whatever.

2655. **Fiscal year.**—The fiscal year of each city shall commence on the second Monday in August.

2656. **Appropriation bill—Annual.**—The city council shall, within the last quarter of each fiscal year, pass an ordinance, to be termed the "Annual Appropriation Bill," in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporations, not exceeding in the aggregate the amount of tax authorized to be levied during the then ensuing year; and in such ordinance shall specify the object and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriation shall be made at any other time within such fiscal year, unless the proposition to make such appropriation has been sanctioned by a majority of the legal voters of such city, either by a petition signed by them or at a general or special election duly called therefor; and all appropriations shall end with the fiscal year for which they were made; *Provided*, That the fund arising from "Road Taxes" and bridge taxes, as in this chapter provided, shall be deemed especially appropriated, and shall not be included in the annual appropriation ordinance; *And provided, further*, That no warrant shall be drawn, account allowed, or debt contracted with reference to such fund, unless there shall be money in the treasury for the payment thereof; *And provided further*, That nothing herein shall be construed to prohibit the council from appropriating other money in the annual appropriation bill for the use of streets, grades, and bridges.

2657. **Same—Estimates.**—Before such annual appropriation bill shall be passed, the council shall prepare an estimate of the probable money necessary for all purposes to be raised in said city during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the different objects and branches of expenditures, as near as may be, with a statement of the entire revenue of the city for the previous fiscal year, and shall enter the same at large upon its minutes, and cause the same to be published four weeks in some newspaper published and of general circulation in the city.

2658. **Money—How expended.**—The mayor and council shall have no power to appropriate, issue, or draw any order or warrant on the treasurer for money unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of this chapter, and appropriations for the class or object out of which such claim is payable has been made as provided in section 61. Neither the city council nor any department or officer of the corporation shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill for that year, except as herein otherwise specially provided. And no expenditure for any improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill; *Provided, however*, That nothing herein contained shall prevent the city council from ordering by a two-thirds vote the repair or restoration of any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made, or by a like vote from making necessary appropriations for quarantine or hospital purposes in case of the outbreak of a virulent epidemic or contagious disease. The city council may, by a like vote, order the mayor to borrow a sufficient sum to provide for the expenses necessary to be incurred in making any repairs or restoration of improvements, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum and the interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein.

2659. **Power to contract.**—No contract shall be hereafter made by the city council or any committee or member thereof, and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

2660. **Contracts—Officers not to be interested in.**—No officer of any city shall be interested, directly or indirectly, in any contract to which the corporation, or any one for its benefit, is a party; and such interest in any such contract shall void the obligation thereof on the part of such corporation, nor shall any officer receive any pay or perquisites from the city other than his salary, as provided by ordinance and this charter, and the city council shall not pay or appropriate any money or other valuable thing to any person not an officer for the performance of any act, service, or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such corporation, unless the same is specially appropriated and ordered by a vote of three-fourths of all the members elected to the council.

2661. **Ordinances.—Rules for passing.**—All ordinances shall be passed pursuant to such rules and regulations as the council may provide, and all such ordinances may be proved by the certificate of the clerk under the seal of the city, and when printed or published in book or pamphlet form, and purporting to be published by authority of the city, shall be read and received in evidence in all courts and places without further proof. The passage, approval, and publication or posting of said ordinances shall be sufficiently proved by a certificate under the seal of the city, from the clerk thereof, showing that said ordinance was passed and approved, and when and in what paper the same was published, and when and by whom and where the same was posted up. And when ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof.

2662. **Ordinances.—Style.**—The style of ordinances shall be: "Be it ordained by the mayor and council of the city of ———" and all ordinances of a general nature shall, within one month after they are passed, be published in some newspaper published within the city, or in pamphlet form, to be distributed or sold, as may be provided by ordinance, and every ordinance fixing a penalty or forfeiture for its violation shall, before the same takes effect, be published for at least one week in the manner above prescribed; *Provided however*, That in case of riots, infectious or contagious diseases, or other impending danger, or other emergency requiring its immediate operation, such ordinances shall take effect upon the proclamation of the mayor, immediately upon its first publication as above provided.

2663.* Whenever the owners of the lots or lands abutting upon any street or alley, or part thereof within said city, representing two-thirds (⅔) of the feet front abutting upon such part of street or alley desired to be graded shall petition the council to grade such street or alley, or part thereof, without cost to the city, the mayor and council shall order the grading done and assess the cost thereof against the property abutting upon such street or alley, or such part thereof so graded. For this purpose the mayor and council shall create suitable grading districts, which shall be consecutively numbered. The cost of grading the streets and alleys within any such grading districts, except the intersections of streets and space opposite alleys within such districts, shall be assessed upon the lots and lands especially benefited thereby in such district in proportion to such benefits, to be determined by the mayor and council under the provisions of this act. The assessment of the special taxes for grading purposes herein provided for shall be made as follows: The total cost of the improvement shall be levied at one time upon the property and become delinquent as herein provided: One fifth ($\frac{1}{5}$) of the total amount shall become delinquent in fifty (50) days after such levy; one-fifth ($\frac{1}{5}$) in one year; one-fifth ($\frac{1}{5}$) in two years; one-fifth ($\frac{1}{5}$) in three years; one-fifth ($\frac{1}{5}$) in four years. Each of said installments, except the first, shall draw interest at the rate of not exceeding seven (7) per cent per annum from the time of the levy of the aforesaid until the same shall become delinquent, and after the same shall become delinquent, interest at the rate of one (1) per cent per month shall be paid thereon, as in the case of other special taxes; such taxes shall be collected and enforced as in other cases of special taxes. The cost of grading the **intersection** of streets and space opposite alleys in any such district shall be paid by the city out of the general or road fund of such city. For the purpose of paying the cost of grading the streets and alleys in any such district, exclusive of the intersections of streets and space opposite alleys therein, the mayor and council shall have power, and may, by ordinance, cause to be issued bonds of the city, to be called "District Grading Bonds of District No. ——," payable in not exceeding five (5) years from date, and to bear interest, payable annually, not exceeding the rate of seven (7) per cent per annum, with interest coupons attached, and that as nearly as possible an equal amount of said bonds shall be made to mature each year, and in such case shall also provide that said special taxes and assessments shall constitute a sinking fund for the payment of said bonds and interest; *Provided*, That the entire cost of grading any such streets or alleys properly chargeable to any lots or lands within any such grading districts according to the feet front thereof, may be paid by the owner of such lots or lands within fifty (50) days from the levy of such special taxes, and thereupon such lot or land shall be exempt from any lien or charge therefor. Said bonds shall not be sold for less than their par value, and if any assessment, or any part thereof, shall fail or for any reason be invalid, the mayor and council may make other and further assessments upon said lots or lands as may be required to collect from the same the cost of any grading properly chargeable thereto as herein provided; provided that the aggregate amount of such bonds issued in any one year shall not exceed the sum of fifty thousand ($50,000) dollars.

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* The original number of this section (68) is twice used in the enrolled bill as indicated by *, *.

2664.* **Ordinances—Powers.**—In addition to the powers herein granted, cities governed under the provisions of this act shall have power by ordinance:

I. **To levy taxes.**—To levy taxes for general revenue purposes, on all property within the limits of the said city taxable according to the laws of the state of Nebraska.

II. **Same—Special assessments.**—To levy any other tax or special assessment authorized by law, and to appropriate money, and provide for the payment of the debts and expenses of the city.

III. **Streets, grades, and repairs.**—To provide for the **grading** and repairing of any street, avenue or alley, and the construction of **bridges**, culverts, and sewers, and shall defray the repairs of the same out of the proper fund of such city; but no street shall be graded except the same be ordered done by the affirmative vote of two-thirds ($\frac{2}{3}$) of the city council.

IV. **Same—Care for—Control—Name and rename.**—To open, widen, or otherwise improve, vacate, care for, control, name, and rename any street, avenue, alley, or lane, parks, and squares within the limits of the city, and also to create, open, and improve any new street, avenue, alley, or lane; *Provided*, That all damages sustained by the owners of the property thereon shall be ascertained in the manner herein provided; *Provided further*, That whenever any street, avenue, alley, or lane shall be vacated, the same shall revert to the owners of the adjacent real estate one-half (½) on each side thereof; *And provided further*, That when an alley is taken wholly from one lot, upon vacation thereof, it shall revert wholly to the owner or owners of the lot from which said alley was originally taken.

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* The original number of this section (68) is twice used in the enrolled bill as indicated by *, *.

V. **Same—Sprinkling.**—On written petition of not less than one-half (½) of the owners of feet front of the land fronting on any street or any specified part thereof, the mayor and council may order such street or such specified part thereof to be sprinkled with water at such time or times as the council may deem proper. Such sprinkling shall be done by contract, awarded to the lowest bidder in each case, or for the entire city or specified district thereof. To pay the expense of such sprinkling, the council may make special assessments upon the lands abutting upon such street or specified part thereof, either on the valuation thereof, or listed for taxation, or by foot front. Such assessments shall be collected by special taxes.

VI. **Same—Sidewalks, sewers.**—To construct or repair sidewalks, sewers, and drains on any highway therein, and to levy a special tax on the lots and parcels of land fronting on such highway or alley, to pay the expenses of such improvements. But unless a majority of the resident owners of the property subject to assessment for such improvement petition the council to make the same, such improvements shall not be made until three-fourths of all the members of such council shall, by vote, assent to the making of the same.

VII. **Same.**—To provide for the laying of temporary plank sidewalk upon the natural surface of the ground without regard to grade, on streets not permanently improved, and to provide for the assessment of the cost thereon on the property in front of which the same shall be laid.

VIII. **Same—Special assessments for.**—Assessments made under the last two (2) preceeding subdivisions of this section shall be made and assessed in the following manner: First, such assessment shall be made by the council at any meeting by a resolution fixing the cost of the construction or repairs of such work along the lot adjacent thereto as a special assessment thereon, the amount charged against the same, which with the vote thereon by yeas and nays shall be spread at length upon the minutes. Notice of the time of holding such meeting, and the purpose for which it is to be held, shall be published in some newspaper published and of general circulation in said city, at least ten days before the same shall be held, or in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed. Second, all such assessments shall be known as "Special Assessments for improvements," and with the cost of notice shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, subject to the same penalties and collected in like manner as other city taxes, but such special assessments shall draw interest at one per cent per month; the same shall be entered by the city clerk on the tax list of the current year, and shall be collected by the treasurer as provided by law.

See **19**, 573 (27 N. W., 647).

IX. **License—Business.**—To raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city, and regulate the same by ordinance. All such taxes shall be uniform in respect to the class upon which they are imposed; *Provided, however*, That all scientific and literary lectures and entertainments shall be exempt from such taxation, as well as concerts and all other musical entertainments given exclusively by the citizens of the city.

X. **Same—Dogs.**—They shall collect a license tax of not less than one or more than three dollars upon the owners and harborers of dogs, and enforce the same by appropriate penalties, and shall cause the destruction of any dog, the owner or harborer of which shall refuse or neglect to pay such license tax; *Provided*, That no such license shall authorize the keeping, owning, or harboring more than one dog. To regulate, license, or prohibit the running at large of dogs, and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

XI. **Streets—Obstructions to.**—To remove all obstructions from the sidewalks, curbstones, gutters, and cross-walks at the expense of the owners or occupiers of the grounds fronting thereon, or at the expense of the person placing the same there, and to require and regulate the planting and protection of shade trees in the streets, the building of bulk-heads, cellars, and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over any adjoining excavation through and under the sidewalk in said city.

XII. **Same—Horses standing.**—To compel persons to fasten their horses or other animals attached to vehicles while standing in the streets, and provide penalties for the neglect thereof.

XIII. **Same—Regulate traffic.**—To regulate the transportation of articles through the streets, and to prevent injuries to the streets from overloaded vehicles.

XIV. **Same—Obstructions—Fast driving, etc.**—To prevent and remove all encroachments into and upon all sidewalks, streets, avenues, alleys, and other city property, and to prevent and punish all horse-racing, fast driving, or riding in the streets, highways, alleys, bridges, or places in the city, and all games, practices, or amusements therein likely to result in damage to any person or property; to regulate, prevent, and punish the riding, driving, or passing of horses, mules, oxen, cattle, or other teams, or any vehicle drawn thereby, over, upon, or across sidewalks, or along any street of the city; to regulate and prevent the use of street, sidewalks, and public grounds, for signs, sign posts, awnings, telegraph, telephone, or other poles, racks, bulletin boards, and the posting of handbills and advertisements; to regulate traffic and sales upon the street, sidewalks, and public places; to punish and prohibit cruelty to animals; to regulate and prevent the moving of buildings through or upon the streets.

XV. **Same—Lighting and gas.**—To make contracts with and authorize any person, company, or association to erect gas-works, electric or other light works, in said city, and give such persons, company, or association the privilege of furnishing light for the streets, lanes, and alleys of said city, for any length of time not exceeding five years.

XVI. **Same—To regulate laying mains.**—To provide for the lighting of streets, laying down of gas pipes, and erection of lamp posts, and to regulate the sale and use of gas and electric or other lights, and the charge therefor, and rent of gas meters within the city, and to require the removal from the streets, avenues, and alleys, and the placing under ground of all telegraph, electric, and telephone wires.

XVII. **Same—Depots—Street railroads.**—To regulate levees, depots, depot grounds, and places for storing freights and goods, and to provide for and regulate the passage of railways through the streets and public grounds of the city, reserving the rights of all persons injured thereby.

XVIII. **Railways—Regulate.**—To regulate the crossing of railway tracks, and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, cars, and trucks within the limits of said city, and prescribe rules relating thereto, and govern the speed thereof, and to make other and further provisions, rules, and restrictions to prevent accidents at the crossings and on the tracks of railways, and to prevent fires from engines, and to regulate and prescribe the manner of running street cars, to require the heating and cleaning of the same, and to fix and determine the fare charged. To require the lighting of any railways within the city the cars of which are propelled by steam, in such manner as they shall prescribe, and fix and determine the number, style, and size of the lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for such lamp posts, and in case the company owning or operating such railway shall fail to comply with such requirements, the council may cause the same to be done, and may assess the expense thereof against such company, and the same shall constitute a lien on any real estate belonging to such company and lying within said city, and may be collected in the manner as taxed for general purposes; to require railroad companies to keep flagmen at all railroad crossings of streets, and to provide protection against the injury to persons and property in the use of such railroads; to compel any railroad to raise or lower their railroad tracks to conform to the general grade which may at any time be established by such city, and where such tracks run lengthwise through or over any street, alley, or highway, to keep the same level with the street surface; to compel and require railroad companies to keep open the streets, and to construct and keep in repair ditches, drains, sewers, culverts along and under their railroad tracks, and to pave their whole right of way on all paved streets, and keep the same in repair.

XIX. **Eminent domain.**—To exercise the power of eminent domain and to take private property for public use, within or without the city, for the purpose of erecting or establishing market houses and market places, streets, hospitals, public buildings, cemeteries, or for any necessary or authorized public purpose; *Provided, however*, That in all cases the city shall make the person or persons whose property shall be taken or injured thereby adequate compensation therefor, to be determined by proceedings instituted in the county court and conducted as by law provided for condemnations by railway companies.

XX. **Libraries—Reading rooms.**—To establish and maintain public libraries and reading rooms, to purchase books, papers, maps, and manuscripts therefor, and to receive donations and bequests of money or property for the same, in trust or otherwise, and pass necessary by-laws and regulations for the protection and government of the same.

XXI. **Parks—Public grounds.**—To hold and improve public grounds and parks within or without the limits of the city, and provide for the protection and preservation of the same, and to provide for the planting and protection of shade or ornamental and useful trees.

XXII. **Borrow money.**—To borrow money on the credit of the city and to pledge the credit, revenue, and public property of the city for the payment thereof, when authorized in the manner herein provided.

XXIII. **Issue bonds.**—To provide for issuing bonds for the purpose of funding any and all indebtedness now existing or hereafter created of the city, now due or to become due; floating indebtednesss shall only be funded by authority of a vote of the people, but the mayorand council may, by a two-thirds vote, issue bonds to pay off any bonded debt, without a vote of the people, at a not higher rate than the debt.

XXIV. **Sinking fund.**—To make provisions for a sinking fund to pay accruing interest, and to pay at maturity the principal of the bonded indebtedness of the city, and to levy and collect taxes on all taxable property in the city, in addition to other taxes for the purpose of paying the same, and to provide that the said tax shall be paid in cash; and whenever any city has heretofore issued bonds by virtue of any special authority derived from the legislature of the territory or state, the council shall have the power to levy and collect taxes for the purpose of paying such bonds as is provided in laws giving such authority.

XXV. **Wards.**—To divide the city into wards, establish the boundaries thereof, and number the same.

XXVI. **Elections.**—To provide for the registration of voters, and may prohibit persons from voting at any or all city elections who shall not have first complied with such regulations and have been registered as required by such ordinance. Such ordinance or ordinances may be repealed, re-enacted, and amended from time to time, as in other cases; *Provided*, That the registration of the last general election shall be valid for any special election. To appoint judges of all elections provided by ordinances for the election of city officers, and prescribing the manner of conducting the same, and the return thereof, and for deciding contested elections, and for holding special elections for any purpose herein provided.

XXVII. **Primaries.**—To regulate the holding of primary elections, at which no person shall be permitted to vote, except such person be an elector of the city and affiliated with the political party holding such primary election at the last prior general election. The judges at such primary elections shall be sworn, and may administer oaths, and that any person violating the regulations so established, or who, being disqualified, shall vote at such primary election, or who shall aid, counsel, or abet any disqualified person in voting thereat, may be fined in any sum not exceeding one hundred dollars ($100) nor less than twenty dollars ($20), and shall stand committed until such fine and costs are paid, and shall be disqualified to vote at any city or primary election for the period of one year thereafter.

XXVIII. **Officers—Removal.**—To provide for removing officers of the city for misconduct whose offices* are created and made elective by this act, and shall have power to create any office that they may deem necessary for the good government and interest of the city, and to provide for filling such vacancies as may occur in any elective office by appointment by the mayor, by assent of the council, to hold until the next general election.

XXIX. **Officers—Regulate power and compensation.**—To regulate and prescribe the powers and duties and compensation of the officers of the city not herein provided for.

XXX. **Official bonds.**—To require all officers or servants elective or appointed in pursuance of this act, to give bond and security for the faithful performance of their duties. No officer shall become security upon the official bond of another, or upon any contractor's bond, license, or appeal bond given to the city, or under any ordinance thereof, or from convictions in the police court.

XXXI. **Reports.**—To require from any officer of the city, at any time, a report in detail of the transactions in his office or of any matters connected therewith.

XXXII. **Census.**—To provide for and cause to be taken the census of the city.

XXXIII. **Market houses and places.**—To purchase and own grounds for, and to erect and establish market houses and market places, and to regulate and govern the same, and also to contract with any person or persons, or associations of persons, companies, or corporations, for the erection and regulation of said market houses and market places, on such terms and conditions and in such manner as the council may prescribe, and raise all necessary revenue therefor as herein provided; and to provide for the erection of all other useful and necessary buildings for the use of the city, and for the protection and safety of all property owned by the city; and they may locate such market houses and market places and buildings aforesaid on any streets, alleys, or public grounds, or on any land purchased for such purpose, and to establish, alter, and change the channels of streams and water courses within the city, and bridge the same; *Provided*, That any such improvement costing in the aggregate a sum greater than five thousand dollars ($5,000) shall not be authorized until the ordinance providing therefor shall be first submitted to and ratified by a majority of the legal voters of such city voting thereon.

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* So in original.

XXXIV. **Water tax.**—To fix the rate of tax to be paid for the use of water furnished by the city, or any person or corporation by means of water-works.

XXXV. **Water-ways.**—To establish, alter, and change the channels of water-courses, and to wall and cover them over; to establish, make, and regulate public wells, cisterns, aqueducts, and reservoirs of water, and to provide for filling the same.

XXXVI. **Sewerage districts.**—To lay off the city into suitable districts for the purpose of establishing a system of sewerage and drainage; to provide such system and regulate the construction, repairs, and use of sewers and drains and all proper house connections and branches, and to provide penalties for any obstruction of, or injury to, any sewer or part thereof, or for violation of such regulations.

XXXVII. **Fire.**—To provide for the organization and support of a fire department, to procure fire engines, hooks, ladders, buckets, and other apparatus, and to organize fire engine, hook and ladder, and bucket companies, and prescribe rules of duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars ($100), and make all necessary appropriations therefor, and to establish regulations for the prevention and extinguishment of fires. To prescribe limits within which no buildings shall be constructed except of brick stone, or other incombustible material, with fire-proof roof, and to impose a penalty for the violation of such ordinance, and to cause the destruction or removal of any building constructed or repaired in violation of such ordinance; and after such limits are established, no special permits shall be given for the erection or reparation of buildings of combustible material. To regulate the construction and inspection of and order the suppression of, and cleaning of fire-places, chimneys, stoves, stove-pipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business which may be dangerous in causing or promoting fires, and to prescribe limits within which dangerous or obnoxious and offensive business may not be carried on.

XXXVIII. **Weights and measures.**—To establish standard weights and measures, and regulate the weights and measures to be used in the city, and to regulate the weighing and measuring of every commodity sold in the city, in all cases not otherwise provided by law, and to prohibit and punish the use of imperfect weights, measures, and weighing apparatus.

XXXIX. **Same—Inspection.**—To provide for the inspection and weighing of hay, grain, and coal, the measuring of wood and fuel to be used in the city, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for sale, hay, coal, and wood; and to fix the fees and duties of persons authorized to perform such duties.

XL. **Police—Regulate.**—To regulate the police of the city, establish and support a night watch, and to impose fines, forfeitures, and penalties for the breach of any ordinance, and also for the recovery and collection of the same, and in default of payment, to provide for confinement in the city prison, or to hard labor in the city upon the streets or elsewhere, for the benefit of the city.

XLI. **Suppress indecencies.**—To restrain, prohibit, and suppress unlicensed tippling shops, billiard tables, bowling alleys, houses of prostitution, opium joints, dens, and other disorderly houses and practices, games and gambling houses, desecration of the Sabbath day, commonly called Sunday, and to prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon said day, and all lotteries, or fraudulent devices and practices for the purpose of obtaining money or property, and all shooting galleries, and all kinds of public indecencies.

XLII. **Disorderly assemblies.**—To prevent and restrain riots, routs, noises, disturbances, or disorderly assemblies in any street, house, or place in the city; to regulate, punish, and prevent the discharge of fire-arms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent, and punish the carrying of concealed weapons; to arrest, regulate, punish, fine, or set at work on the streets, or elsewhere, all vagrants and persons found in said city without visible means of support or some legitimate business; to regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, dynamite, petroleum, or any of the productions thereof, and other material of like nature, and the use of lights in stables, shops, or other places, and the building of bonfires; to regulate and prohibit the piling of building material or any excavation or obstruction in the street.

XLIII. **Same.**—To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, by intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places, or otherwise violating the public peace by indecent and disorderly conduct or by lewd or lascivious behavior.

XLIV. **Vagrants—Tramps.**—To provide for the punishment of vagrants, tramps, or common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, watch stuffers, ball game players, persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves.

XLV. **Drainage.**—To require any and all lots or pieces of ground within the city to be drained or filled, so as to prevent stagnant water or any other nuisance accumulating thereon, and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, the council may cause such lots or pieces of ground to be drained or filled, and the costs and expenses thereof shall be levied upon the property so filled or drained, and collected as any other special tax.

XLVI. **Nuisance.**—To prevent any person from bringing, depositing, having, or leaving upon and near his premises, or elsewhere within the city, any dead carcass and putrid beef, pork, fish, hides, or skins of any kind, or any other unwholesome substance, and to compel the removal of the same.

XLVII. **Regulate halls, churches, etc.**—To regulate, license, or suppress halls, opera houses, churches, places of amusement, entertainment, or instruction, or other buildings used for the assembly of citizens, and to cause them to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire, and for escape from such place in case of fire, and to prevent the overcrowding, and to regulate the placing and use of seats, chairs, benches, scenery, curtains, blinds, screens, or other appliances therein, and to provide that for any violation of any such regulation a penalty of two hundred dollars ($200) shall be imposed, and upon conviction of any such * licenses of any violation of any ordinance regulating such places, and license of any such place shall be revoked by the mayor and council; and whenever the mayor and council shall by resolution declare any such place to be unsafe, the license thereof shall be thereby revoked, and the council may provide that in any case where they have so revoked a license, any owner, proprietor, manager, lessee, or person opening, using, or permitting such place to be opened or used for any purpose involving the assemblage of more than twelve persons, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not exceeding two hundred dollars ($200).

XLVIII. **Same—Construction of buildings.**—To prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings, and prescribe the number and construction of means of exit and entrance and the number and construction of fire escapes, and require the keeper or proprietor of any hotel, boarding house, or dormitory to provide and maintain such sufficient and such number of ladders, ropes, balconies, and stairways, and other appliances as by ordinance may be prescribed to facilitate the escape of persons from any such building in case of fires.

XLIX. **Domestic animals.**—To regulate or prohibit the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibitions, and the fees and expense of impounding and keeping the same, and of such sale.

L. **Pounds.**—To provide for the erection of all needful pens, pounds, and buildings for the use of the city, within or without the city limits, and to appoint and compensate keepers thereof, and establish and enforce rules governing the same.

LI. **Auctions.**—To regulate, license, or prohibit the sale of domestic animals, or of goods, wares, and merchandise, at public auction on the streets, alleys, highways, or any public grounds within the city; to regulate or license the auctioneering of goods, wares, and merchandise.

LII. **Contagious diseases.**—To make regulations to prevent the introduction of contagious, infectious, or malignant diseases into the city, and to create a board of health, to make quarantine laws for that purpose, and enforce the same within five (5) miles of the city.

LIII. **Hospitals, work-houses, etc.**—To erect, establish, and regulate hospitals and work-houses and poor-houses, houses of correction, jails, station houses, and other necessary buildings, and to provide for the support and government of the same.

LIV. **Health.**—To make regulations to secure the general health of the city; to prescribe rules for the prevention, abatement, and removal of nuisances; to make and prescribe regulations for the construction, location, and keeping in order of all slaughter houses, stock yards, warehouses, stables, or other places where offensive matter is kept or is likely to accumulate, within the corporate limits, or within five miles thereof.

LV. **Cemeteries.**—To purchase, hold, and pay for, in the manner herein provided, lands not exceeding eighty (80) acres, in one body, outside of the limits of such city, for the purpose of the burial of the dead, and all necessary grounds for the hospital grounds and water-works, and to have and exercise police jurisdiction over the same, and over any cemetery lying near said city, and used by the inhabitants thereof.

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* So in original.

LVI. **Same.**—To survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds, and avenues leading thereto owned by such city; to construct walks, rear and protect ornamental trees therein, and provide for paying the expenses thereof.

LVII. **Same.**—To convey cemetery lots owned by such city, by certificates signed by the mayor and countersigned by the clerk, under the seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number as laid down on such plat, or map for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulation of the city council, and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

LVIII. **Same—Lots.**—To limit the number of cemetery lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots and any improper adornment thereof, but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or lots.

LIX. **Same—Rules.**—To pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars ($100), regulating, protecting, and governing the cemetery, the owners of lots therein, visitors thereof, and trespassers therein. And the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself.

LX. **Same—Regulate.**—To make all such ordinances, by-laws, rules, regulations, and resolutions not inconsistent with the laws of the state as may be expedient, in addition to the special powers in this section granted, maintaining the peace, good government, and welfare of the city, and its trade, commerce, and manufactures, and to enforce all ordinances by inflicting penalties for the violation thereof, not exceeding one hundred dollars ($100) for any one offense, recoverable with costs, together with judgment or imprisonment, until the amount of said judgment and costs shall be paid.

LXI. **Council—President of.**—To elect one of their own body, who shall be styled the "president of the council," and who shall preside at all meetings of the council in the absence of the mayor, and in the absence of the president, to elect one of their own body to occupy the place temporarily, and who shall be styled "acting president of the council"; and the president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the council, and all acts of the president, or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

LXII. **Ordinances—Revision of.**—To provide for the revision of the ordinances from time to time and for their publication in pamphlet or book form, with or without the statutes relative to cities governed by this act.

LXIII. **Paving.**—The council shall have power to open, extend, widen, narrow, grade, curb, gutter, and pave, or otherwise improve and keep in good repair or cause the same to be done, in any manner they may deem proper, any street, avenue, or alley, within the limits of the city, and may grade partially or to the established grade or part, or otherwise improve any width or part of any such street, avenue, or alley, and may also construct and repair, or cause and compel the construction and repair of sidewalks in such city, of such material and in such manner as they may deem proper and necessary, and to defray the costs and expense of such improvement or any of them; the mayor and council of such city shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to or abutting upon the street, avenue, alley, or sidewalk thus in whole or in part opened, widened, curbed, and guttered, graded, parked, extended, constructed, or otherwise improved or repaired, or which may be specially benefited by any of said improvements; *Provided,* That the above provisions shall not apply to ordinary repairs of streets or alleys, and one-half ($\frac{1}{2}$) of the expenses of bringing streets, avenues, alleys, or parts thereof to the established grade, shall be paid out of the general road fund of the city; *Provided further,* The mayor and council of any city, governed by this act, shall have the power by ordinance to establish the grade of any street, avenue, or alley in the city, and when the grade of any street, avenue, or alley shall have been heretofore established, or when the grade of any street, avenue, or alley shall be established and approved as herein provided, the grade of no street or part of a street shall be changed unless the consent in writing is first obtained of the owners of lots or lands abutting upon the street or part of a street where such change of grade is to be made, who represents a majority of the feet thereon, and not then until the damages to property owners, which may be caused by such change of grade shall have been assessed and determined by three disinterested freeholders who shall be appointed by the mayor and council for that purpose, who shall make such appraisement, taking into consideration the benefit, if any, to such property, and file their report with the city clerk, and the amount of damages so assessed shall be tendered to such property owners or their agents, as soon as the funds for that purpose are obtained from the assessments of such damages upon the property benefited by reason of such change of grade or otherwise realized; *Provided,* That no street, avenue, or alley shall be worked to such change of grade until the damages so assessed shall be tendered to such property owners or their agents. Before any street, avenue, or alley shall be ordered graded, the damages, if any, by reason of such grading to property along that portion of the street proposed to be graded, including approaches thereto, shall first be ascertained and determined by three (3) disinterested freeholders, who shall be appointed by the mayor and council for that purpose, who shall make such appraisements, taking into consideration the benefits, if any, to such property, and who shall exclude any damages resulting from any change or changes of the original or first established grade; and the amount of damages so assessed, unless an appeal is taken, shall be due and payable to such property owners, or their agents, in sixty (60) days after the completion and acceptance of such work of grading; *Provided further,* That where any street is to be graded under the provisions of this section, but not to the established grade, it shall be done only after the owner representing the majority of the front feet of the property abutting on the part of such street to be so partially graded shall petition the city council for such work to be done; *Provided further,* That in case the grade of any street, or part of street used by the public shall not have been established, or in case any street, or part thereof, shall not have been worked to grade, then, in such case the owner or owners of any lots, lot, or lands abutting on such street, or portion thereof, as aforesaid, may only be required to construct or repair the sidewalk, along such street, or part thereof, with plank as a council may direct in such case; *And provided further,* That in case the owner or owners of any such lot, lots or land abutting on such street or portion thereof, shall fail to construct or repair such sidewalks in the manner and within the time as directed and required by the council in such case, after having received due notice to do so, they shall be liable to all damages or injury occasioned by reason of a defective or dangerous condition of any such sidewalk; *And provided further*, That curbing and guttering shall not be ordered or required to be laid on any street, avenue, or alley not ordered to be paved, except on the petition of a majority of owners of the property abutting along the line of that portion of the street, avenue or alley to be curbed or guttered. The mayor and council of any city governed by this act, shall have power to pave, repave, or macadamize any street or alley, or any part thereof, in any city, and for that purpose to create suitable paving districts, which shall be consecutively numbered, such work to be done under contract, and under the superintendence of the board of public work of the city; whenever the owners of lots or land abutting upon the streets or alleys within any paving district, representing a majority of feet fronting thereon shall petition the council to pave, repave, or macadamize such streets or alleys, it shall be the duty of the mayor and council to pave, repave, or macadamize the same, and in all cases of paving, repaving, or macadamizing there shall be used such material as [a] majority of the owners shall determine upon; *Provided*, The council shall be notified in writing by said owners of such determination within thirty (30) days next after the passage and approval of the ordinance ordering such paving, repaving, or macadamizing. In case such owners fail to designate the material they desire used in such paving, repaving, or macadamizing in the manner and within the time above provided, the mayor and council shall determine upon the material to be used. The cost of paving, macadamizing, or repaving the streets and alleys within any paving district, except the intersections of streets and space opposite alleys within such districts, shall be assessed upon the lots and lands especially benefited thereby in such district in proportion to such benefits, to be determined by the council and mayor under the provisions of this act. The assessment of the special taxes for paving purposes herein provided for shall be made as follows: The total cost of the improvement shall be levied at one time upon the property and become delinquent as herein provided: One-tenth ($\frac{1}{10}$) of the total amount shall become delinquent in fifty (50) days after such levy, one-tenth ($\frac{1}{10}$) in one (1) year, one-tenth ($\frac{1}{10}$) in two (2) years, one-tenth ($\frac{1}{10}$) in three (3) years, one-tenth ($\frac{1}{10}$) in four (4) years, one-tenth ($\frac{1}{10}$) in five (5) years, one-tenth ($\frac{1}{10}$) in six (6) years, one-tenth ($\frac{1}{10}$) in seven (7) years, one-tenth ($\frac{1}{10}$) in eight (8) years, one tenth ($\frac{1}{10}$) in nine (9) years. Each of said installments, except the first, shall draw interest at the rate not exceeding seven (7) per cent per annum from the time of the levy aforesaid until the same shall become delinquent, and after the same shall become delinquent, interest at the rate of one (1) per cent a month shall be paid thereon, as in the case of other special taxes. Such taxes shall be collected and enforced as in other cases of special taxes. In case of omissions, errors, or mistakes in making such assessment or levy in respect of the total cost of the improvement, or deficiencies, or otherwise, it shall be competent for the council to make a supplemental assessment and levy to supply such deficiencies, omissions, errors, or mistakes. The cost of paving, macadamizing, or repaving the intersections of streets and space opposite alleys in any paving district shall be paid by the city as hereinafter provided, but nothing herein contained shall be construed to exempt any street or other railway company from paving or repaving its whole right of way, including all space between and one foot beyond their outer rails, at its own cost, whenever any street shall be ordered paved or repaved by the mayor and council of the city as provided by law; *And provided further*, That no street or other railway company shall enter upon or occupy any paved street within five years after said paving shall have been completed, until they shall have paid into the city treasury the original cost of paving between and one foot beyond the outer rail, which sum shall be credited on the special assessments upon the abutting lots, and if said special assessments shall have been paid, then said money shall be paid the same as any other claim to the party paying such special assessments by the city treasurer. For the purpose of paying the cost of paving, macadamizing, or repaving the streets and alleys in any paving district, exclusive of the intersection of streets and space opposite alleys therein, the mayor and council shall have power and may by ordinance cause to be issued bonds of the city, to be called "District Paving Bonds of District No. ———," payable in not exceeding ten years from date, and to bear interest, payable annually, not exceeding the rate of seven per cent per annum, with interest coupons attached, and in such case shall also provide that said special taxes and assessments shall constitute a sinking fund for the payment of said bonds and interest; *Provided*, that the entire cost of paving, repaving, or macadamizing any such streets or alleys properly chargeable to any lots or lands within any such paving district according to the front feet thereof, may be paid by the owner of such lots or lands within fifty days from the levy of such special taxes, and thereupon such lot or land shall be exempt from any lien or charge therefor. Said bonds shall not be sold for less than their par value, and if said assessment of any part thereof shall fail or for any reason be invalid, the mayor and council may make other and further assessments upon said lots or lands as may be required to collect from the same the cost of any paving or macadamizing properly chargeable thereto as herein provided. Whenever the mayor and council deem it expedient, they shall have the power, for the purpose of paying the cost of paving, repaving, or macadamizing the intersections of streets and spaces opposite alleys in the city, to issue bonds of the city, to run not more than twenty years, and to bear interest payable semi-annually at a rate not exceeding six per cent per annum, with coupons attached, to be called "Paving Bonds," and which shall not be sold for less than par, and the proceeds of which shall be used for no other purpose than paying for the cost of paving, repaving, as macadamizing the intersections of streets and alleys in the city. *Provided*, That the aggregate amount of such bonds issued in any one year shall not exceed the sum of fifty thousand dollars ($50,000); *And provided further*, that no such bond shall be issued until the question of issuing the same has been submitted to the electors of the city, at a general or special election therein, and authorized by a vote of the majority of the electors voting at such election; *Provided further*, That if in any city governed by the provisions of this act there shall be any real estate belonging to any county, school district, or other municipal or quasi-municipal corporation abutting upon the street whereon paving or other special improvements have been ordered, it shall be the duty of the board of county commissioners, board of education, or other proper officers, to pay such special taxes; and in the event of the neglect or refusal of such board or other officers to levy or collect the taxes necessary to pay for such improvements, the city may recover the amount of such special taxes in a proper action, and the judnment thus obtained may be enforced in the same manner as other * The word "lot," as in the act used, shall be taken to mean a "lot" as described and designated upon the recorded plat of any such city, and in case there is no recorded plat of any such city, it shall mean a lot as described and designated upon any generally recognized map of such city. The word "land" shall mean any subdivided real estate; *Provided*, That if the lots and real estate abutting upon that part of the street ordered paved, repaved, or macadamized, as shown upon any recorded plat or map are not of a uniform depth, or if for any other reason it shall appear just and proper to the mayor and council, they are authorized and empowered to determine and establish the depth to which ths real esstate shall be charged and assessed with the cost of improvement, which shall be determined and established according to the benefits accruing to the property by reason of the improvement. Real estate may be so charged and assessed to a greater depth of the lots, as shown upon any such plat or map. The mayor and council may, in their discretion, include all the real estate to be charged and assessed with the cost of such paving or improvement in the paving districts in this section hereinbefore provided for, but are not required so to do, and the mayor and council may, in their discretion, in determining whether the requisite majority of owners who are hereinbefore authorized to petition for paving, repaving, or macadamizing, and to determine the kind of material to be used therefor, having joined in such petition and determination, consider and take into account all the owners of real estate to be charged and assessed with cost of improvement, or only such as own real estate that in fact abuts upon the part of the street proposed to be so improved. The provision of this section in regard to the depth to which the real estate may be charged and assessed shall apply to all special taxes that may be levied, in proportion to the foot front in cities governed by this act. Whenever curbing or curbing and guttering is done upon any street or avenue in any paving district in which paving has been ordered, and the mayor and council shall deem it expedient so to do, they shall have power and authority, for the purpose of paying the cost of such curbing and guttering, to cause to be issued bonds of the city, to be called "Curbing and Guttering Bonds of Paving District No. ——," payable in not exceeding ten years from date, and to bear interest payable annually, not exceeding the rate of seven per cent per annum, with interest coupons attached, and in all such cases shall assess at one time the total cost of such curbing and guttering, or curbing, as the case may be, upon the property abutting or adjacent to the portion of the street or avenue so improved, according to special benefits, such assessments to become delinquent the same as the assessment of the special taxes for paving purposes, and to draw the same rate of interest and to be subject to the same penalties, and may be paid in the same manner as special taxes for paving purposes, and the special tax so assessed shall constitute a sinking fund for the payment of said bonds and interest, and said bonds shall not be sold for less than their par value. Any party feeling aggrieved by any such special tax or assessment or proceeding, may pay the said special taxes assessed and levied upon his, her, or its property, or such installments thereof as may be due, at any time before the same shall become delinquent, under protest, and with notice in writing to the city treasurer that he intended to sue to recover the same back, which notice shall particularly state the alleged grievance, and the ground thereof; whereupon such party shall have the right to bring a civil action within sixty (60) days thereafter, and not later, to recover back so much of the special taxes paid as he shall show to be illegal, inequitable, and unjust, the costs to follow the judgments, or to be apportioned by the court as may seem proper, which remedy shall be exclusive. The city treasurer shall promptly report all such notices to the city council for such action as may be proper. No court shall entertain any complaint that the party was authorized to make and did not make to the city council sitting as a board of equalization, nor any complaint not specified in said notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the groundwork, equity, and justice of the tax. The burden of proof to show such tax, or part thereof, invalid, inequitable, and unjust, shall rest upon the party who brings such suit.

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*Apparent omission in original; for act and also the engrossed bill of this act both read as follows: judgments against municipal corporations.

Amended 1891; p. 164 to 196.

2665. **Same—Contracts for.**—All grading, paving, macadamizing, or guttering of any streets, avenues, or alleys in the city for which or any part thereof a special tax shall be levied shall be done by contract with the lowest responsible bidder, to be determined by the council.

2666. **Same—Street intersections.** The cost and expense of grading, filling, paving, culverting, curbing, guttering, or otherwise improving, constructing, or repairing streets, avenues, alleys, and sidewalks, at their intersections, may be included in the special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the council.

2667. **Special taxes, when due.**—Such special taxes shall be due and may be collected as the improvements are completed in front of, or along, or upon any block or piece of ground, or at the time the improvement is entirely completed or otherwise, according as shall be provided in the ordinance levying the tax.

2668. **Proceedings of officer's warrant.**—When any special tax is levied it shall be the duty of the city engineer to calculate the amount of tax thus due on each lot, part of lot, or piece of ground, subject to the same, and file a statement thereof with the city clerk, who, as soon as the said tax is due on any lot or piece of ground, shall issue a certificate describing such lot or piece of ground by number and block and stating the amount of special tax due thereon, and the purpose for which tax was levied, and he shall forthwith deliver a duplicate of such certificate to the city treasurer, who shall without delay give at least five days' notice through a newspaper published in the city of the time when such tax will become delinquent; to every such certificate the city clerk shall append a warrant in the usual form requiring the city treasurer to collect such special tax or taxes by distress or sale of goods and chattels of the bodies corporate owing any such special tax or taxes, if the same be not paid before the time fixed for the same to become delinquent, and to make his return of such warrant with his doings thereon, on or before the fifteenth day of July next thereafter.

2669. **Apportionment of assessment.**—It shall be sufficient in any case to describe the lot or piece of ground as the same is platted and recorded, although the same belong to several persons; but in case any lot or piece of ground belong to different persons, the owner of any part thereof may pay his portion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer.

2670. **Completion and acceptance of work.**—When any improvement mentioned in this act is completed according to contract, it shall be the duty of the city engineer to carefully inspect the same, and if the improvement is found to be properly done, such engineer shall accept the same, and forthwith report his acceptance thereof to the board of public works, who shall report the same to the council with recommendation that the same be approved or disapproved, and the city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front or along any block or piece of ground, the engineer may accept the same in sections from time to time if found to be done according to contract, reporting his acceptance as in other cases.

2671. **Special sewer assessments.**—Special taxes may be levied by the mayor and council for the purpose of paying the cost of constructing sewers or drains within the city, such taxes to be levied on the real estate lying and being within the sewerage districts in which such sewer or drain may be situated to the extent of benefits to such property by reason of such improvement, the benefits to such property to be determined by the council sitting as a board of equalization, after notice to property owners as in other cases of special assessment provided; and in cases where the council, sitting as such board of equalization, shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or real estate within such sewerage districts, or according to such other rule as the council sitting as such board of equalization may adopt for the distribution or adjustment of such costs, upon the lots or real estate in such district benefited by such improvement, and all taxes or assessments made for sewerage or drainage purposes shall be collected in the same manner as other special assessments, and shall be subject to the same penalty. And where sewers are constructed and any assessment to cover the cost thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and council, for the purpose of paying the cost of such improvement, are hereby authorized and empowered to make a reassessment of such cost on the lots or real estate lying and being within the sewerage district in which any such sewer may be situated, to the extent of the benefits to such property by reason of such improvement, and such reassessment shall be made substantially in the manner provided for making original assessments of like nature as herein provided, and any sums which may have been paid toward said improvement, upon any lots or real estate included in such reassessment, shall be applied under the direction of the council to the credit of the persons and property on account of which the same was paid, and in case the credit shall exceed the sum reassessed against such persons and property as herein provided for, the council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof; and the taxes so reassessed and not paid under a prior assessment shall be collected and enforced in the same manner as other special taxes, and shall be subject to the same penalty.

2672. **Railways—Use of streets—Liability.**—All street railway companies now existing or hereafter created, in any city governed by this act, or that shall hereafter be organized thereunder, shall be required to pave or repave between and to one foot beyond their outer rails, or in case said railway use more than one track in any street, they shall pave between and to one foot beyond their outer rails where such company owns, at their own cost. Whenever any street shall be ordered paved or repaved by the mayor and city council of such city, such paving or repaving shall be done at the same time and shall be of the same material and character as the paving or repaving of the street upon which such railway track is located, unless other material be specially ordered by the board of public works. Such street railway companies shall be required to keep that portion of the street required by them to be paved in repair, using for said purpose the same material as the streets upon which the track is laid at the point of repair, or such other material as the board of public works may require and order upon streets in cities governed by this act; as streets are hereafter paved or repaved, street railway companies shall be required to lay in the best approved manner the strap or flat rail. The track of all railway companies, when located upon the streets or avenues of the city, shall be kept in repair and safe in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such track in repair, or for obstructing the streets or avenues of such city. For injuries to persons or property arising wholly from the failure of such company to keep their tracks in proper repair and free from obstruction, such companies shall be liable and the city shall be exempt from liability. The words "street railway companies," as used in this act, shall be taken to mean and include any persons, companies, corporations, or associations owning any street railway in any such city.

2673. **Special assessments.**—In the event of the refusal or neglect of any such street railway companies to pave, repave, or repair when so directed by the mayor and council, upon the paving or repaving of any street upon which their track is laid, the mayor and council shall have power to pave, repave, or repair the same, and the cost and expense of such paving, repaving, or repairing may be collected by levy and sale of any real or personal property of said street railway company, the same as special taxes are collected. Special taxes for the purpose of paying the costs of any such paving, repaving, macadamizing, or repairing of any such railway may be levied upon the track, including the ties, iron, roadbed, and right of way, side tracks, and appurtenances, including buildings and real estate belonging to any such company or persons, and used for the purpose of such street railway business, all as one property, or upon such part of such tracks, appurtenances, and property as may be within the district paved, repaved, macadamized, or repaired, or any part thereof, and shall be a lien upon the property upon which levied from the time of the levy until satisfied. No mortgage, conveyance, pledge, transfer, or incumbrance of any such property of any such company or person, or of any of its rolling stock or personal property, created or suffered by any such company or party, after the time when any street or part thereof upon which any such street railway shall have been laid, shall have been ordered paved, repaved, macadamized, or repaired, shall be made or suffered, except subject to the actual or prospective lien of such special taxes, whether actually levied or not, if such levy be in contemplation. The treasurer shall have the power and authority to seize any personal property belonging to any such person or company for the satisfaction of any such special taxes when delinquent, and to sell the same upon the same advertisement and the same manner as constables are now authorized to sell personal property upon execution at law, but failure to do so shall in no wise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate upon which such special taxes may be levied may be sold. It shall also be competent for any such city to bring a civil action against any party owning or operating any such street railway and liable to pay said taxes to recover the amount thereof or any part thereof delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment and have execution therefor, and no property, real or personal, shall be exempt from any such execution; *Provided*, That real estate shall not be levied upon by execution, except by execution out of the district court on a judgment therein, or transcript of a judgment filed therein, as now provided by law. No property seized by the treasurer as hereinbefore provided, or upon any such execution shall be taken from the officer holding the same or any order of replevin. No defense shall be allowed in any such civil action, except as goes to the ground work, equity, and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special tax shall be shown to be invalid, unjust, and inequitable, judgment shall be rendered for such amount as is just and equitable, and costs shall follow the judgment. It shall be competent for the mayor and council, upon the written application of any company, association, corporation, or person owning any such street railway, to provide that such special taxes shall become delinquent and payable in installments as in case of taxes levied upon abutting real estate as hereinbefore provided, but such application shall be taken and deemed a waiver of any and all objections to such taxes and to the validity thereof. Such application shall be made at or before the final levy of such taxes. The provisions of this act with regard to the levy, collection, and enforcement of special taxes to pay the cost of paving, repaving, macadamizing, or repairing of any such street railways shall apply to all such special taxes hereafter levied.

2674. **Elective board of public works.**—There may be in each city a board of public works which shall consist of three members, residents of said city, to be appointed by the mayor, by and with the assent of the council, before the first Monday of June, 1889, for the term of one, two, and three years respectively, the term of office of each to be designated by the mayor, and annually thereafter shall be appointed, as hereinbefore provided, one member, whose term of office shall be three years. The mayor, by and with the assent of the council, shall designate one of the members of such board to be the chairman thereof. The salary of the members of such board of public works shall be fixed by ordinance, and the salary of the chairman shall not exceed six hundred dollars per annum, and the salary of each of the other members shall not exceed one hundred dollars per annum. Each of the members of said board shall, before entering upon the discharge of his duties, take an oath to faithfully discharge the duties of his office, and enter into a bond with such city with two or more good and sufficient sureties (to be approved by the mayor and council), the bond of the chairman to be in the sum of ten thousand dollars ($10,000), and the other two in the sum of five thousand dollars ($5,000) each, conditioned for the faithful performance of his duties as member of the board of public works. The chairman of such board shall devote his entire time to the performance of his official duty, and no member of such board shall ever be directly or indirectly interested in any contract entered into by them on behalf of such city, nor shall they be interested either directly or indirectly in the purchase of any material to be used or applied in and about the uses and purposes contemplated by this act. It shall be the duty of the board of public works, and it shall have power, to make contracts on behalf of the city for the performance of all such work, and the erection of all such improvement as may be ordered by the mayor and council, but only with the approval of the mayor and council; to superintend the performance of all such work and the erection of all such improvements; to approve the estimates of the city engineer, which may be made from time to time, of the value of the work as the same may progress; to accept any work done or improvements made when the same shall be fully completed according to contract, subject, however, to the approval of the mayor and council, and to perform such other duties as may be conferred upon them by ordinance. Any member of such board may at any time be removed from office by the mayor and a majority of the council, and the proceedings in that behalf shall be entered in the journal of the council.

2675. **Poll tax.**—Each city governed by this chapter shall provide that all male residents of the corporation between the ages of twenty-one and fifty years shall, between the first day of April and the first day of November of each year, either by themselves or satisfactory substitute, perform two days' labor upon the streets, alley, or highways within such corporation at such time and places as the proper officer may direct, and upon three days' notice in writing given; *Provided*, That all persons so notified may commute the labor so required by the payment of the sum of three dollars to the proper officer of the city, as may be provided by ordinance, and the fund arising under this section shall be extended by the city authorities in the repair and maintenance of the streets, and alleys, and highways in said city. They may further provide that for each day's failure to attend and perform the labors as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding one dollar for each day's delinquency. The amount so due for labor tax to the amount of three dollars, upon the failure to labor or commute as above required, shall be treated and collected as taxes on property, and the same shall be a lien on all the property of such persons that may be listed and assessed for taxation for that year; and it shall be the duty of the city clerk to certify the amount due from each individual as aforesaid to the city treasurer as hereinbefore provided, and the certificate of the city clerk under the seal of the city, that the person named therein has performed the labor or commuted as herein required, shall be received by the treasurer in discharge of the amount due from such person. The fund arising under this section shall be paid into the fund hereinbefore created from taxes levied for road purposes, and shall be treated and expended in the same manner.

2676. **Finance—Published statement.**—The mayor and council shall cause to be published, semi-annually, a statement of the receipts of the city and the sources thereof, and an itemized account of the expenditures and the financial condition of the city.

2677. **Witnesses.**—The council or any committee of the members thereof shall have power to compel the attendance of witnesses for the investigation of matters that may come before them, and the presiding officer of the council, or chairman of such committee for the time being, may administer the requisite oaths, and such council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

2678. **County jail.**—Any city shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordinances of said city, but it shall be liable to the county for the cost of keeping such prisoners. The city shall not pay to exceed fifteen cents for each meal furnished prisoners and fifteen cents for lodging.

2679. **Bonds for sewers and water-works.**—The mayor and council shall have power to borrow money and pledge the property and credit of the city upon its negotiable bonds or otherwise, to an amount not exceeding in the aggregate one hundred thousand dollars, for the purpose of constructing or aiding in the construction of a system of sewerage, authority therefor having been first obtained by a majority vote of the people at an election upon a proposition submitted in the manner provided by law for the submission of propositions, to aid in the construction of railroads and other works of internal improvement, and to borrow money and pledge the property and credit of the city, in the manner aforesaid, and upon being authorized as aforesaid, to an amount not exceeding one hundred thousand dollars for the purpose of constructing, maintaining, and operating a system of water-works for said city; *Provided,* That bonds heretofore issued by any such city for said purposes, and being outstanding and unpaid, shall be included and counted as a part of the amount hereby authorized to be issued.

2680. **Same—Vote of people.**—Before submitting any proposition for borrowing of money for either of the purposes mentioned in the preceding section, the mayor and council shall determine upon and adopt a system of sewerage or of water-works, as the case may be, and shall procure from the city engineer an estimate of the actual cost of such system, and of the cost of so much thereof as the mayor and council may propose to construct, with the amount proposed to be borrowed, and plans of such system and such estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the time such proposition to borrow money shall be pending; after a system shall have been adopted, no other system shall be adopted in lieu thereof, unless authorized by a vote of the people; after construction of water-works the city may by vote of the people issue bonds to construct extensions of such works not to exceed ten thousand dollars in any one year.

2681. **Same—Water-works.**—When the system of water-works shall have been adopted and the people shall have voted to borrow money to aid in their construction as aforesaid, the mayor and council may erect, and construct, and maintain such system of water-works, either within or without the corporate limits of the city, and make all needful rules and regulations concerning the use of such water-works, and to do all acts necessary for the construction, completion, and management, and control of the same not inconsistent with this act, including the taking of private property for public use for the construction and operation of the same, compensation to be ascertained and made therefor in the manner provided by law for acquiring the right of way and depot grounds for railway companies by the exercise of the right of eminent domain.

2682. **Same—Contracts.**—In case such aids shall not be voted by the people in the manner aforesaid, the mayor and council may contract with and procure individuals or corporations to construct and maintain a system of water-works in such city for any time not exceeding twenty years from the date of the contract, and with a reservation to the city of the right to purchase such water-works at any time after the lapse of ten years from the date of the contract upon payment to such individuals or corporation of any amount to be determined from the contract, not exceeding the cost of construction of such water-works; in other respects such contract may be upon such terms as may be agreed upon by a two-thirds vote of the mayor and council, entered upon the minutes; *Provided,* That no such contract shall be made unless thereunto authorized by a majority vote of the legal voters of said city at a special election called for such purpose.

2683. **Bonds—Interest.**—No bonds issued by the city for any purpose, except paving district bonds, shall draw interest at a greater rate than six per cent per annum, nor sold for less than par or face value, and shall be redeemable at the option of the city at any time after five years from their date.

2684. **Water commissioner.**—Before the mayor and council shall enter upon the construction of any system of water-works a water commissioner shall be appointed, who shall give bonds in not less than the sum of five thousand dollars.

2685. **Same—Duties.**—Such water commissioner, under the direction and supervision of the mayor and council, shall have general management and control of such system of water-works and of the erection and construction of the same, fixing the rates, within such limits as may be prescribed by ordinance, to be paid by the inhabitants of the city for the use of water, water-meters, and hydrants. It shall be his duty to collect all moneys receivable by the city on account of said system of water-works, and to faithfully account for and pay the same over to the treasurer, taking his receipts therefor in duplicate, and filing one of the same with the city clerk; to make a detailed report to the council at least once in six months of the condition of said water system and of all mains, pipes, hydrants, reservoirs, and machinery, and recommending such improvements, repairs, and extensions thereof as he may think proper, and showing the amount of the receipts and expenditures thereof for the preceeding six months; and no bill or claim for any work or material done or furnished for said system of water-works shall be paid or allowed in whole or in part, except as the same shall have been first audited and allowed by said water commissioner. Said water commissioner shall perform such other duties as may be required of him by ordinance, and upon his recommendation the mayor and council may employ such laborers and clerks as to them may appear necessary.

2686. **Council—Mayor—Eligibility.**—No member of the council or the mayor shall be eligible to the office of water commissioner during the term for which he shall be elected.

2687. **Tax for sewerage and water-works.**—When any **bonds** shall have been issued by the city for the purpose of constructing or aiding in the construction of a system of water-works or system of sewerage, there shall thereafter be levied annually upon all of the taxable property of said city a tax not exceeding one mill for every twenty thousand dollars of bonds so issued, which shall be known as the water-works tax, or sewerage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the water-works, and from the payment and collection of water rent taxes and rates of assessments, shall first be applied to the payment of the current expenses of water-works and interest on money borrowed and bonds issued for their construction, and the surplus, if any, shall be used for the extension of such system or retained for a sinking fund for the payment of such loan or bonds at maturity.

2688. **Liquors—License.**—The mayor and city council may by ordinance license, restrain, regulate, or prohibit the selling or giving away of malt, spirituous, or vinous, mixed or fermented intoxicating liquors, the license not to extend beyond the municipal year for which it shall be granted, and to determine the amount to be paid for such license, not less than the minimum sum required by any general law upon the subject; *Provided,* That special permits may be granted to druggists for the sale of liquors for medicinal and mechanical purposes; *And provided further,* That all such licensees, except druggists, shall be required to give bonds in all respects, and they and their sureties shall be liable on such bonds in all respects as in case of persons to whom licenses for the sale of intoxicating liquors are or may be granted by county boards, and all the restrictions, regulations, forfeitures, and penalties provided by law respecting the sale of liquors by persons licensed therefor by the county boards, shall apply to and govern persons (except druggists) licensed by virtue of this section, and any person selling or giving away in said city any liquor of the description mentioned in this section, without first having complied with such regulations, and procured a license or permit therefor, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not more than one hundred dollars for each offense, and be committed to the city jail until such fines and costs are paid; *Provided,* That any permits issued to a druggist may be revoked by the council at pleasure; *And further,* That any license issued by the mayor and council for any purpose mentioned in this section shall be revoked by the mayor and council upon conviction of the licensee of any violation of any law, ordinance, or regulation pertaining to the sale of such liquors, and proceedings of appeal or error taken to review such judgment of conviction shall in nowise affect the revocation of such license or the effect of such conviction until such appellate or error proceedings be finally determined and such conviction be finally annulled, revoked, or reversed.

Is constitutional; revocation may be made by resolution on a certificate of a conviction and without notice. 23, 380 (36 N. W., 554).

2689. **Payment of taxes.**—All taxes levied for the purpose of raising money to pay for interest or to create a sinking fund for the payment of the principal of any funded or bonded debt of the city shall be payable in money only, and, except as otherwise expressly provided, no moneys so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which they shall have been raised; *Provided,* That such sinking fund may, under the direction of the mayor and council, be invested in any of the undue bonds issued by the city, provided they can be procured by the treasurer at such rate or premium as shall be prescribed by ordinance; *And provided further,* That any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the treasurer out of any fund specifically created for that purpose, without any further order or allowance by the mayor or council.

2690. **Printer's fees.**—The mayor or council shall not allow or pay for the printing of any notice, advertisement, or publication in any newspaper any greater sum or rate than twenty-five cents per square of unleaded nonpareil type.

2691. **Special engineer.**—The mayor and council may, whenever they deem it expedient, employ a special engineer to make or assist in making any particular estimate or survey, and any estimate or survey made by such special engineer shall have the same validity and serve in all respects as though the same had been made by the city engineer.

2692. **Police judge—Jurisdiction.**—The police judge shall have exclusive jurisdiction over, and it shall be his duty to hear and determine, all offenses against the ordinances of the city, and shall have jurisdiction concurrent with justices of the peace, and of misdemeanors under the laws of the state, arising within the limits of the city, when the fine which may be imposed does not exceed two hundred dollars ($200), or the imprisonment three months; and he shall have also such concurrent jurisdiction for the examination of offenders against the laws of the state for offenses arising within the city limits.

2693. **Same—Powers—Duties.**—The police judge shall be a conservator of the peace and his court shall be open every day, except Sundays, to hear and determine any and all cases cognizable before him. No act shall be performed by him on Sundays, except to receive complaint, issue process, and take bail. He shall have power to enforce due obedience to all orders, rules, and judgments made by him; he shall have the same power as the district court in the issuing of warrants, subpœna, or other process that may be necessary, and may fine or imprison for contempt offered to him while holding court or to process issued by him, in the same manner and to the same extent as the district court.

2694. **Same—Appeal.**—In all cases before the police judge arising under the ordinances of the city, wherein the fine assessed exceeds the sum of ten dollars or the imprisonment ten days, an appeal may be taken by the defendant to the district court in and for the county in which said city is situated; but no appeal shall be allowed unless such defendant shall within ten days enter into recognizance with sufficient securities, to be approved by the judge, conditioned for the payment of the fine and costs of appeal, if it should be determined against the appellant.

2695. **Same—Error.**—On the trial of any case in the police court it shall be the duty of the police judge to sign any bill of exception tendered to the court during the progress of such trial; *Provided*, The truth of the matter be fairly stated, and thereupon said exception shall be entered in the record of such trial. Any final conviction, sentence, or judgment of the police court may be examined into by the district court on writ of error, which may be allowed by such court or the judge thereof, for sufficient cause, and proceedings may be staid as may be deemed reasonable; and the revising courts shall in such proceedings take judicial notice of all ordinances of the city.

2696. **Same—Complaints.**—Whenever complaints shall be made to the police judge on oath or affirmation of any person that an offense has been committed, of which the police judge has jurisdiction, the police judge shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the city council, policeman, the sheriff, or a constable of the county, or some person specially appointed by the police judge for that purpose.

2697. **Fines and Penalties.**—All fines and penalties collected arising from a breach of ordinances of the city shall be paid to the city treasurer, and all fines and penalties collected, arising from misdemeanors under the laws of the state, shall be paid to the county treasurer, and the police judge shall report at the end of each calendar month a list of all cases for violation of city ordinances instituted in his court and the disposition thereof, with a statement of the fines, penalties, and costs by him received, and shall at the end of each month pay to the city treasurer all such fines by him received, and in the event that the police judge shall fail to make report as herein provided for the period of ten days, his office shall be declared vacant.

2698. **Trial.**—When any person shall be brought before the police judge upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

2699. **Recognizance.**—Upon good cause the police judge may postpone the trial of a case to a day certain, in which case he shall require the defendant to enter into recognizance, with sufficient security, conditioned that he will appear before said judge at the time and place appointed, then and there to answer the complaint alleged against him.

2700. **Same—Breach.**—In case of the breach of any cognizance entered into as aforesaid, the same shall be certified to the district court of the proper county to be proceeded upon according to law; if in the progress of any trial before the said judge it shall appear that the accused ought to be put upon his trial for an offense not cognizable before said judge, he shall immediately stop all further proceedings before him, and proceed as in other cases exclusively cognizable before the district court.

2701. **Witnesses.**—It shall be the duty of said judge to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment, if necessary, and all witnesses shall receive the sum of fifty cents for each day's attendance.

2702. **Trial by jury.**—Cases in the police court for violation of city ordinances shall be tried and determined by the police judge without the intervention of a jury; cases of misdemeanor under the statutes of the state shall be tried by the police judge alone, unless the defendant demand a jury; if jury be demanded the case shall be tried by a jury of six competent men, unless a smaller number is agreed to by the defendant, to be selected in the manner provided by law for selecting jurors in justices' courts, and the trial of such cases before said police judge shall be conducted in all respects not herein otherwise provided in like manner as in criminal cases before justices of the peace. Jurors in the police court shall receive the same fees as jurors in justices' courts, to be taxed as other costs are taxed in the case.

2703. **Judgment.**—If the defendant be found guilty, the police judge shall declare and assess the punishment, and render judgment accordingly. It shall be part of the judgment that the defendant stand committed until judgment be complied with; *Provided*, That in any prosecution for violation of any ordinance, the defendant shall have the right to produce before said police judge one or more sureties to the satisfaction of said judge, which said sureties shall, with the defendant, confess a judgment for the amount of the fine or penalty imposed, with the cost of suit, and said judge shall enter said confession of judgment upon his docket and render judgment accordingly in the name of the state of Nebraska against them for the amount of such fine and costs, and if said judgment be not paid within ninety days from the date of such confession and entering of judgment, said police judge shall issue execution and collect the amount of said fine or penalty and costs, in the manner provided by law for collecting judgment by execution in justices' courts.

2704. **Discharge.**—Any defendant committed under the provisions of this act for a misdemeanor arising under the laws of this state may be discharged in the same manner as if he had been committed in the county court.

2705. **Proceedings.**—In all cases not herein specially provided for, the process and proceeding before the judge shall be governed by laws regulating proceedings in justices' courts in criminal cases.

2706. **Continuance.**—When a trial shall be continued by the judge it shall not be necessary to summon any witness who may be present at the continuance, but the judge shall verbally notify such witness as either party may require to attend before him to testify in the case on the day of trial, which verbal notice shall be as valid as a summons.

2707. **Challenges.**—In trials by a jury before the police judge challenges shall be allowed in the same manner as in similar cases before the justices of the peace.

2708. **Punishment.**—Any person convicted before the judge of any offense under the ordinances of the city shall be punished by such fine and imprisonment as may be regulated by ordinance.

2709. **Working prisoner.**—Whenever the defendant is sentenced to imprisonment for the violation of a city ordinance, he shall be put to work for the benefit of the city, under the direction of the mayor, for the term of his imprisonment, and when committed for the non-payment of a fine or costs for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs $1.50 (one dollar and fifty cents) per day for each day he shall work.

2710. **Vacancy in office.**—In case of a vacany in the office of police judge by death, resignation or otherwise, or in case of the absence, disability, or personal interest of said judge, such fact being shown by affidavit, the mayor shall, on notice therof, appoint some justice of the peace, holding and exercising the duties of his office, within the corporate limits of such city, to act as police judge during such vacancy, absence, or disability of said police judge.

2711. **Viaducts.**—The mayor and council shall have power to require any railroad company or companies, owning or operating any railroad track or tracks upon or across any public street or streets of the city, to erect, construct, reconstruct, complete, and keep in repair any viaduct or viaducts, upon or along such street or streets, and over or under such track or tracts, including the approaches to such viaduct or viaducts as may be deemed and declared by the mayor or council necessary for the safety and protection of the public; *Provided*, That the approaches to any such viaduct which any railroad company or companies may be required to construct, reconstruct, and keep in repair, shall not exceed for each viaduct a total distance of eight hundred feet. Whenever any such viaduct shall be deemed and declared by ordinance necessary for the safety and protection of the public, the mayor and council shall provide for appraising, assessing, and determining the damages, if any, which may be caused to any property by reason of the construction of any such viaduct and its approaches. The proceedings for such purpose shall be the same as provided herein for the purpose of determining damages to property owners by reason of the change of grade of a street, and such damages shall be paid to the city, and may be assessed by the city council, against property benefited, and the cost of approaches beyond said distance of eight hundred feet may also be assessed by the council against property benefited by reason of the construction of any such viaducts and its approaches. The width, height, and strength of any such viaducts and the approaches thereto, the material therefor, and the manner of the construction thereof, shall be as required by the board of public works, as may be approved by the mayor and council. When two or more railroad companies own or operate separate lines of track to be crossed by any such viaduct, the proportion thereof and of the approaches thereto to be constructed by each or the cost to be borne by each shall be determined by the mayor and council. After the completion of any such viaducts any revenue derived therefrom by the crossing thereon of street railway lines, or otherwise, shall constitute a special fund and shall be applied in making repairs to such viaduct. All ordinary repairs to any such viaduct, or to the approaches thereto, shall be paid out of such funds, if any.

C. IN GENERAL.

Sec. 2712. "An act empowering the mayor and council in cities of the first class to license and regulate the keeping of toll bridges; to fix the rate of toll and to authorize the collection of the same." 1871, p. 26. In force February 8.

2712. That the mayor and council in any city of the first class shall have power to license and regulate the keeping of **toll bridges** within or terminating within the city, for the passage of persons and property over any river passing wholly or in part within or running by and adjoining the corporate limits of any such city, to fix and determine the rates of toll over any such bridge, or over the part thereof within the city, and to authorize the owner or owners of any such bridge to charge and collect the rates of toll so fixed and determined, from all persons passing over or using the same.

Sec. 2713. "An act to provide for the levy of a tax in cities of the first class for the payment of sewers already contracted." 1881, p. 160. In force June 1.

2713. That in cities of the first class the mayor and council shall levy a **tax** in each year in addition to all other taxes, in the manner provided by law for the levy of other taxes, of one and one-half mills on the dollar of the assessed valuation of all the taxable property in said city, to pay all indebtedness heretofore incurred **for** the construction and maintenance of any main sewer or **sewers** or branches thereof and draw warrants therefor on the fund so provided for; *Provided*, That before any payment shall be made under the provisions of this act the **value of** said **sewers** shall be ascertained by the inspection and **appraisement** of three disinterested experts, who shall be appointed for that purpose, one of whom shall be selected by the mayor and council of such city within which such sewer or sewers may have been constructed, one by the contractors who constructed such sewer or sewers, and the third to be chosen by the two experts so selected, who shall first be sworn to make a true and impartial appraisement of the value of such sewer or sewers upon actual inspection and measurement, and who shall return their appraisement in writing to the mayor of such city and said appraisement being so returned, and said sewer or sewers accepted by said mayor and council, the same shall be paid with interest thereon at the rate provided by law when such indebtedness accrued; *Provided further*, That in no case shall payment be made in excess of the contract price and interest thereon, from the date of such accrued indebtedness, under which such sewers may have been constructed.

Sec. 2714. "An act to empower and require county commissioners to divide precincts into two or more voting districts in certain cases for general election purposes, and to conform to ordinances of cities of the first class in relation thereto. 1883, p. 183. In force February 28.

2714. Whenever the mayor and city council of any city of the first class in this state shall by ordinance divide any **ward** of such city into two or more voting or **polling districts**, the board of county commissioners of the county in which such city is located shall, for general election purposes also, at their next regular session after the taking effect of said ordinance, order the establishment of said voting or polling districts in conformity with the provisions of said ordinance, and shall appoint judges and clerks of election for such polling districts as appointments are now made when a vacancy exists in such offices.

SECS. 2715 to 2720. "An act to provide for **viaducts, bridges,** and **tunnels** in certain cases in cities of the first class." 1885, p. 109. In force March 4.

2715. That the mayor and city council in any city of the first class shall have **power,** whenever they deem any improvement herein provided for necessary for the safety and convenience **of** the public, to engage and aid in the **construction of** any **viaduct** or bridge over or tunnel under any railroad track or tracks, switch or switches in such cities, when such tracks or switches cross or occupy any street, alley, or highway thereof in the manner and to the extent hereinafter provided.

2716. Whenever any such viaduct, bridge, or tunnel shall be deemed necessary, as provided in the preceding section, the mayor and city council shall have the power to secure and adopt **plans** and specifications therefor, together with the **estimated cost** of the work, and thereupon, if the railroad company or companies across whose track or switches the work is proposed to be built will assume three-fifths ($\frac{3}{5}$) of the entire cost thereof and three-fifths ($\frac{3}{5}$) of all damages to abutting property on account of construction of said viaduct, bridge, or tunnel, and secure to the city the payment of the necessary funds to meet it as the work progresses, in such manner and with such security as the mayor and the city council shall require, and when the payment of the further sum of one-fifth ($\frac{1}{5}$) of the money required for such improvement is arranged for in a manner satisfactory to said mayor and council, either by private donation or by execution of good and sufficient bond as will protect said city from the payment of said one-fifth ($\frac{1}{5}$), then the said mayor and council may proceed to **contract** with the necessary party or parties for the construction of such viaduct, bridge, or tunnel under the supervision of the board of public works of such city, and to provide for the payment of one-fifth ($\frac{1}{5}$) of the costs thereof by the city, by special tax on all taxable property in such city, and one-fifth ($\frac{1}{5}$) by special tax to property benefited, as provided in the following section, if not otherwise provided for.

2717. The **money** necessary to pay **for** two-fifths ($\frac{2}{5}$) of the entire cost of any such **viaduct,** bridge or tunnel, which the city is to bear, shall be **raised** as follows, viz: one-fifth ($\frac{1}{5}$) of the entire cost of the work, or so much thereof as shall be covered by special benefits, shall be paid by special assessment or special taxation of real property benefited by said improvement, which benefits shall be appraised and assessed by the mayor and council upon property benefited, and according to benefits, and in such manner as said mayor and council shall direct and determine; such assessment to become due and payable within fifty days after the levy is made; and the payment of all such assessments shall be enforced in the same manner, and with like penalties for delinquencies, as are provided in the case of special assessments for the paving of streets in such city. And the remainder one-fifth ($\frac{1}{5}$), together with two-fifths ($\frac{2}{5}$) the cost of damages to abutting property, required to be paid, shall be paid by said city, and shall be paid out of a special fund created and raised for the purpose of defraying the cost of such improvement, and by a tax on all the taxable property within the city; and such tax to be levied when ordered by the mayor and council, and payable at the same time as the city taxes for general city purposes.

2718. The city, with the assent of the railway company or companies aiding in the construction of any such **viaduct,** bridge or tunnel, as herein provided, may permit any **street railway** company to build its street railway track and operate its railway **upon** or through the same, upon such terms and conditions, and for such compensation as shall be agreed upon between the city and the street railway company. And the compensation paid for such use shall be set apart and used towards the maintainance of such viaduct, bridge, or tunnel.

2719. Before entering upon the construction of any work contemplated by this act, the said mayor and council shall provide for assessing and appraising the **dam-**

ages, if any, sustained by property abutting on such improvements, from which appraisal of damages the owner shall have the right of appeal to the district court, as now provided by law in similar cases. The proceedings for ascertaining any such damages shall be the same as provided for in case of the change of grade of streets. And said damages shall be paid by the city, as provided in section two and three of this act.

2720. The mayor and council of any such city shall have the power to pass any and all **ordinances,** not in conflict with this act, that may be necessary or proper **for** the **construction,** maintenance and protection of the works herein provided for.

III. CITIES OF SECOND CLASS.

A. 5,000 TO 25,000.

Secs. 2721 to 2820. "An act to provide for the organization, government, and powers of **cities of** the **second class** having more than 10,000 inhabitants." 1883, p. 130. In force March 1. (Title changed to read 5,000. 1885, p. 148. Sec. 76 repealed. 1887, ch. 13, p. 307.)

2721. That all cities of the second class having more than five thousand (5,000) and less than twenty-five thousand (25,000) **inhabitants** shall be governed by the provisions of this act.

Amended 1885, p. 148.

2722. Whenever any city shall hereafter have attained a population of five thousand inhabitants, and such fact shall have been duly ascertained and certified by the mayor of such city to the governor, the governor shall by **proclamation** declare such city to be a city of the second class and subject to the provisions of this act.

Amended 1885, p. 148.

2723. Any city heretofore incorporated and subject to the provisions of this act shall include within its **corporate limits** all the territory heretofore included therein, and also the mayor and council may by ordinance include within the corporate limits of such city all **territory** contgiuous or **adjacent** thereto which has been at any time, by the owner or proprietor thereof, or by any one by his or her authority or acquiescence, laid off or subdivided into lots or blocks containing not more than five acres of land each, whether the same shall have been so laid off, subdivided, or platted in accordance with any statute of this state or otherwise, and the mayor and council shall have the power by ordinance to compel the owners of any contiguous or adjacent land, or any part thereof, **brought within** the corporate limits of such city as aforesaid, to lay out streets, avenues, and alleys so as that the same shall correspond in width and direction and be continuous with the streets, avenues, and alleys of such city or otherwise, as shall appear most for the convenience of the inhabitants of such city and the public, and to vacate any public road heretofore established through such land where necessary to secure regularity in the general system of streets, avenues, and alleys through the same.

Amended 1885, p. 149.

2724. **Same.**—Whenever any **land** lying contiguous or **adjacent** to any such city, or to any addition or extension thereof, shall be or shall have been, by the owner or proprietor thereof, or any person by or with his or her authority or acquiescence, laid off into lots or blocks containing not more than one acre of land, whether the same shall have been or shall be laid off, subdivided, or platted in accordance with any statute of this state or otherwise, or has sold or begun to sell off such adjacent lands by metes and bounds, in tracts not exceeding one acre, or whenever any tracts or portion, not exceeding ten acres of land, may have been or shall be contiguous to, or surrounded or bounded by, on one or more sides by any addition or extension or intended addition to any such city, whether platted as aforesaid or not, it shall be competent for the mayor and city council by ordinance to declare the same, by such name designation or description as they may see fit, a **part of such city**, and thereupon and thereafter the corporate limits of such city shall extend to and include such land.

Amended 1885, p. 149.

2725. When **land** or territory shall be or shall have been laid off, subdivided or platted into lots or blocks, and such lots or blocks shall have been for the purpose of sale or otherwise subdivided into smaller lots or parcels, such smaller lots or parcels shall be **treated** and regarded **as lots** or blocks within the meaning of the last two preceding sections, and land or territory laid off or subdivided as in said sections described, shall be treated and regarded **as contiguous** to such city, notwithstanding any stream or embankment or any strip or parcel of land, not more than two hundred feet in width, may be or lie between such land or territory and the corporate limits of such city.

2726. The **corporate name** of each city organized under or governed by this act shall be "The city of ———," and all and every process whatever affecting any such city shall be served upon the mayor or acting mayor, or in the absence of both of said officers from the city, then upon the city clerk.

2727. **No right** of property accrued to any city, corporation or person under any law heretofore in force shall be enforced by this act, and all city **ordinances** now in force and not repugnant to the provisions of this act shall remain and **continue** in force until altered or repealed by the mayor and council.

Change from city of 1,500 to 5,000 will not vacate city offices. 20, 37 (28 N. W., 846.)

2728. Each **city** governed by the provisions of this act shall be a body corporate and politic, and shall have **powers**: *First*—To sue and be sued. *Second*—To purchase and hold real and personal property for the use of the city, and real estate sold for taxes. *Third*—To sell and convey any real or personal estate owned by the city, and make such order respecting the same as may be deemed conducive to the interests of the city. *Fourth*—To make all contracts and do all other acts in relation to the property and concerns of the city necessary to the exercise of its corporate or administrative powers. *Fifth*—To exercise such other and further powers as may be conferred by law. The powers hereby granted shall be exercised by the mayor and council of such city as hereinafter set forth, but they shall not have the power to sell any real estate of the city unless authorized to do so by a vote of the majority of the electors of such city at a special election therefor.

2729. Each city governed by this act shall be divided into not less than four nor more than six **wards**, the boundaries of which shall be defined by ordinance. Each ward shall constitute an election district; *Provided*, That when any ward shall contain over eight hundred legal voters, the mayor and council by ordinance may divide such ward into two election districts.

2730. **Precinct lines** in that part of any county not under township organization, embraced within the corporate limits of a city of the second class, shall correspond with the ward lines in such city, and such precinct shall correspond in number with the wards of the city, and be co-extensive with the same; *Provided*, That when a ward is divided into two election districts, the precinct corresponding with such ward shall be divided so as to correspond with the election districts; *And provided further*, That no justices of the peace or constables shall be elected in such precinct; and every such city shall constitute a district for the election of justices of the peace and constables, and in every such district there shall be elected two justices of the peace and two constables at the time provided by law for the election of such officers in other districts.

This construed with general election law to provide for two justices in each ward. 28, 755 (45 N. W., 290). Precinct lines must be made to correspond with the ward boundaries. 20, 302 (30 N. W., 57).

2731. At all elections authorized by this act the **polls** shall be opened at such place in each election district as may be designated by the mayor or as fixed by ordinance, and shall be kept open between the hours of nine o'clock A. M. and seven o'clock P. M., and no longer.

2732. The general city **election** in all cities governed by this act shall be held on the first Tuesday in April annually. The city **officers** shall consist of a mayor, treasurer, clerk, and police judge, each of whom shall be elected by a plurality of votes, for the term of two years, commencing on the first Monday succeeding their election and until their successor shall be elected and qualified. A city marshal, a city engineer, a city attorney, a street commissioner, and a chief of the fire department, and a water commissioner, and such number of police as the mayor and council see fit, may be appointed by the mayor by and with the advice and consent of the council. Any of such officers or policemen may be removed at any time by a vote of a majority of all the members of the council, and any of such policemen may be removed at any time by the mayor or by a vote of a majority of the members of the council. In case of emergency the mayor may appoint special policemen without the advice or consent of the council, who should be removable at the pleasure of either the mayor or council; *Provided*, That in case of any **vacancy** in the office of the treasurer or clerk by death, resignation, or otherwise, the same shall be filled by appointment by the mayor, by and with the advice and consent of the council until the next general election.*

2733. **Councilmen** who shall have been elected in the city subject to the provisions of this act, and whose terms of office shall not have expired at the time fixed for holding the first election of city officers in such city under the provisions of this act, shall continue to hold their offices for their unexpired terms in all respects as though they had been elected under the terms thereof. At the first annual city election held under the provisions of this act, one councilman shall be elected for each ward in the city in which there shall be a councilman whose term shall not have expired, who shall hold his office for the term of two years and until his successor shall be elected and qualified, and in every other ward in such city there shall be elected two councilmen, one of whom shall hold his office for the term of one year, and one of whom shall hold his office for the term of two years, and respectively until their successors shall be elected and qualified; and annually thereafter there shall be elected in each ward one councilman, who shall hold his office for the term of two years and until his successor shall be elected and qualified; *Provided, however*, That whenever the number of wards in any such city shall be increased in any manner provided by law, such increase shall not affect the terms of office of councilmen then in office, but that at the next annual election for city officers held after such increase there shall be elected for each of such additional wards, to be designated as such by the mayor and councilmen, and by the notice of election, two councilmen, one of whom shall hold his office for the term of one year, and one of whom shall hold his office for the term of two years, and respectively until their successors shall be elected and qualified.

2734. The qualifications of **electors** in the several wards shall be the same as is required for electors in precincts, under the laws of the state. At the first meeting of the council after any city election, the **returns** shall be **canvassed,** and they shall cause the clerk to make out and deliver certificates of election to the persons found to be elected; and a neglect of any such **officer** to **qualify** within ten days after the delivery to him of such certificate shall be deemed a refusal to accept the office to which he may have been elected.

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*This section was sought to be amended 1885, p. 151, but as it was not mentioned in the title of that act, and as the proposed changes were slight, the original section is here inserted.

Board cannot change election returns. 24, 139 (38 N. W., 31).

2735. Regular **meetings of** the **council** shall be held at such times as may be fixed by ordinance, and special meetings whenever called by the mayor or any two councilmen. Two-thirds of all the members elected to the council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, and compel the attendance of absent members.

2736. The annual **salaries** of all officers shall be fixed by ordinance not exceeding the following sums respectively: The mayor five hundred dollars, treasurer three hundred dollars, each councilman three hundred dollars, clerk five hundred dollars, marshal and policemen not exceeding sixty-five dollars each per month, city engineer not exceeding five dollars per day for each day actually employed, and not exceeding five hundred dollars in any one year, street commssissioner not exceeding ninety dollars per month for the time actually employed and not exceeding one thousand dollars in any one year, city attorney five hundred dollars, water commissioner one thousand dollars per year; all other officers and employees of the city except police judge shall receive such compensation as the mayor and councilmen may think fit at the time of their employment; *Provided, however,* That the mayor and council may at any time, instead of employing a street commissioner, require his duties to be performed by the marshal or any policeman, but without additional compensation.

Amended 1885, p. 152. When no salary is fixed at commencement of term of office, a law passed during term of office is not within the inhibition. 19, 443 (27 N. W., 433).

2737. The **police judge** shall receive the same **fees** as a county judge for similar services.

2738. All **officers** shall be **qualified** electors of the city, entitled to vote at all elections therein.

2739. The **mayor** shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, except as otherwise herein provided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and of this act are complied with.

2740. He shall sign the commissions and **appointments** of all the officers elected or appointed in the city.

2741. The mayor shall have power to sign or **veto** any ordinance passed by the city council, and to sign or veto any order, by-law, resolution, award of or vote to enter into any contract, or the allowance of any claim; *Provided,* That any ordinance, order, by-law, resolution, award, or vote to enter into any contract, or the allowance of any claim vetoed by the mayor, may be passed over his veto by a vote of two-thirds of all the members elected to the council, notwithstanding his veto; and should the mayor neglect or refuse to sign any ordinance and return the same with his objections in writing at the next regular meeting of the council, the same shall become a law without his signature; *Provided,* That the mayor may veto any item or items of any appropriation bill, and approve the remainder thereof, and the item or items so vetoed may be passed by the council over the veto as in other cases.

Amended 1885, p. 153.

2742. He shall, from time to time, communicate to the city council such information and **recommend** such **measures** as in his opinion may tend to the improvement of the finances of the city, the police, health, comfort, ornament, and general prosperity of the city.

2743. In case of any **vacancy** in the office of mayor, or in case of his absence or disability, the president of the council shall exercise the powers and duties of the office of mayor until such vacancy shall be filled or such disability removed; or in case of temporary absence, until the mayor returns, and perform such other duties as may be required by law. The mayor may **require** any male inhabitant of the city, between the ages of eighteen and fifty years, to **aid** in enforcing the laws.

2744. The mayor shall have power, after conviction, to **remit fines** and forfeitures, to **grant** reprieves and **pardons** for all offenses arising under the ordinances of the city.

2745. The **marshal** shall have the immediate superintendence of the police; and the marshal and policemen shall have **power**, and it shall be their duty, to arrest all offenders against the laws of the state, or of the city, by day or by night, in the same manner as a sheriff or constable, and to keep them in the city prison or other place to prevent their escape, until a trial or examination may be had before a proper officer, and shall have the same powers as sheriffs and constables in relation to all criminal matters, and all process issued other than in ordinary civil actions by the police judge.

2746. The mayor or council shall have power, when he or they deem it necessary, to require any **officer** of the city to exhibit his **accounts** or other papers, and to make **reports** to the council in writing, touching any subject or matter he may require pertaining to his office. The **mayor** shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty, and he shall have such **jurisdiction** as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof.

2747. The mayor and clerk and police judge of the city are hereby authorized to **administer oaths**, to take depositions, and acknowledgments of deeds, mortgages, and other instruments of writing affecting the title of real estate, and certify the same under the seal of the city, and the same shall be received as valid throughout the state.

2748. The **city engineer** shall make estimates of the cost of labor and materials which may be done or furnished by contract with the city, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, water-works, bridges, curbing, and gutters, and the improvement of streets, and erection and repair of buildings, and shall perform such other duties as the council may require; * *Provided, however*, That the mayor and council may, whenever they deem it expedient, employ a **special engineer** to make or assist in making any particular estimate or survey, and any estimate or survey made by such special engineer shall have the same validity, and serve in all respects as though the same had been made by the city engineer.* Before the city council shall make any contract for building water-works, or any part thereof, or any sewers, bridges, or sidewalks, or for any work on the streets, or for any other work or improvement, an **estimate** of the cost thereof shall be made by the city engineer and submitted to the council, and no contract shall be entered into for any work or improvement for a price exceeding such estimate; and in advertising for bids for any such work, the council shall cause the amount of such estimate to be

published therewith. Such advertisement shall be for at least twenty days in some newspaper published in the city.
* to * added 1887, p. 308.

2749. The **street commissioner** shall, subject to the orders of the mayor and council, have general charge, direction, and control of all work in the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the council may require.

2750. The emoluments of **no officer** whose election or appointment is required by this chapter shall be increased or diminished during the term for which he shall have been elected or appointed, and no person who shall have resigned or vacated any office shall be **eligible** to the same during the time for which he was elected or appointed, when during the same time the **emoluments** have been **increased.**

2751. On the **passage** or adoption **of** every resolution or order to enter into a contract by the mayor and council, the yeas and nays shall be called and recorded, and to pass or adopt any by-law, **ordinance,** or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council shall be required; **Provided*, That the concurrence of the mayor and one-half of the whole number of members elected to the council shall be sufficient to pass any such ordinance, by-law, resolution, or order.* All appointments of the officers by any council shall be made *viva voce,* and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the **vote** resulting in an appointment, shall be recorded.
* to * added 1885, p. 153.

2752. The mayor and council shall have the care, supervision, and **control** of all public **highways,** bridges, streets, alleys, public squares, and commons within the city, and shall cause the same to be kept open and in repair and free from nuisances. But all **public bridges,** exceeding sixty feet in length, over any stream crossing a state or county highway, shall be **constructed** and kept in repair **by** the **county.**
See 18, 120 (24 N. W., 444).

2753. No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner bringing produce or provisions to any of the markets in the city, or standing in or occupying a place in any of the **market places** of the city, or in the streets contiguous thereto, on market days and evenings previous thereto; but the mayor and council shall have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, to prescribe the kind and description of articles which may be sold, and the stand or places to be occupied by vendors, and may authorize the immediate seizure and arrest, or removal from the markets, of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

2754. All **ordinances** and resolutions or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council; **Provided*, That the concurrence of the vote of the mayor and one-half of the whole number of members elected to the council shall be sufficient for the passage of any such ordinances, resolutions, or orders.* Ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council shall dispense with the rule. Ordinances shall contain no subject which shall not be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

*** to * added 1885, p. 154.**

2755. All **claims** against the city must be presented in writing, with a full account of the items verified by the oath of the claimant or his agent that the same is correct, reasonable, and just, and no claim (or demand) shall be audited or allowed unless presented and verified as provided for in this section; *Provided*, No costs shall be recovered against the city in any action brought against it for any unliquidated claim, including claims for personal injury sustained by reason of the negligence of such city, which has not been presented to the city council to be audited; nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with interest thereon; *Provided further*, That all **actions** against such city for injury or damage to person or property hereafter sustained by reason of the negligence of such city must be brought within six months from the date of sustaining the same; and to maintain such action it shall be necessary that the party file in the office of the city clerk, within six months from the date of the injury or damage complained of, a statement giving full name and the time, place, and circumstances of the injury or damage complained of, and the name or names of the witness or witnesses thereto.

Amended 1885, p. 154. Void as to the limit of time in which action can be brought. 23, 778 (37 N. W., 657). See 29, 379 (45 N. W., 694).

2756. Upon allowance of **claims** by the council, the order for their payment shall specify the particular fund or appropriation out of which they are payable, as specified in the annual appropriation bill, to be passed in the manner hereinafter provided, and no order or **warrant** shall be drawn in excess of seventy-five per centum of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment, and no claim shall be audited or allowed, except an order or warrant for the payment thereof may legally be drawn.

2757. The council of each city shall, at the time provided by law, cause to be certified to the county clerk the percentage or number of mills on the dollar of tax levied for all city purposes by them on the taxable property within said corporation for the year then ensuing, as shown by the assessment roll for said year, including all special assessments and **taxes** assessed, as hereinbefore provided, and said clerk shall place the same on the proper tax list, to be collected in the manner provided by law for the collection of state and county taxes in the county where such city is situated, and in all sales for any delinquent taxes for municipal purposes, if there be other delinquent taxes due from the same person, or lien on the same property, the sale shall be for all the delinquent taxes; and such sales and all sales made under or by virtue of this section or the provisions of law herein referred to shall be of the same validity, and in all respects be deemed and treated as though such sales had been made for the delinquent state and county taxes exclusively. The amount which may be so certified, assessed, and collected shall not exceed ten mills on the dollar to defray its general and incidental expenses, in addition to any special assessments or special taxes, or amounts assessed as taxes under the provisions of this chapter, and such sum as may be authorized by law to be levied for the payment of outstanding bonds and debts.

2758. The treasurer of the **county** shall **pay over** on demand to the treasurer of any city all money received by him arising from **taxes** levied **belonging to** such **city**, together with all money collected as a tax on dogs from the residents of such corporation, for the use of the general fund therein. And also all the moneys arising from the levy of road tax against or upon property in said city, which shall be expended only upon the streets, grades, and bridges in said city, or within three miles thereof.

2759. The **fiscal year** of each city shall commence on the second Monday in August.

2760. The city council shall, within the last quarter of each fiscal year, pass an ordinance, to be termed the **"annual appropriation bill,"** in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, not exceeding in the aggregate the amount of tax authorized to be levied during the then ensuing year; and in such ordinance shall specify the objects and purposes for which such **appropriations** are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year unless the proposition to make such appropriation has been first sanctioned by a majority of the legal voters of such city, either by a petition signed by them, or at a general or special election duly called therefor; and all appropriations shall end with the fiscal year for which they were made; *Provided*, That the fund arising from "road taxes," as in this chapter provided, shall be deemed specially appropriated, and shall not be included in the annual appropriation ordinance; *And provided further*, That no warrant shall be drawn, account allowed, or debt contracted with reference to such fund unless there shall be money in the treasury for the payment thereof; *And provided further*, That nothing herein shall be construed to prohibit the council from appropriating other money in the annual appropriation bill for the use of streets, grade and bridges.

2761. Before such annual appropriation bill shall be passed, the council shall prepare an **estimate** of the probable amount of money necessary for all purposes to be raised in said city during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the different objects and branches of expenditures, as near as may be, with a statement of the entire revenue of the city for the previous fiscal year, and shall enter the same at large upon its minutes, and cause the same to be published four weeks in some newspaper published or of general circulation in the city.

2762. The mayor and council shall have no power to appropriate, issue, or draw any order or warrant on the treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed, according to the provisions of this chapter, and appropriations for the class or object out of which such claim is payable has been made as provided in section 41 [2760]. Neither the city council, nor any department or officer of the corporation, shall add to the corporation **expenditures** in any one year anything over and above the amount provided for in the annual appropriation bill for that year, except as herein otherwise specially provided; and no expenditure for any improvement, to be paid for out of the general fund of the corporation, shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill; *Provided, however*, That nothing herein contained shall prevent the city council from ordering, by a two-thirds vote, the repair or restoration of any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made, or, by a like vote, from making necessary appropriations for quarantine or hospital purposes in case of the outbreak of a virulent epidemic or contagious disease. The city council may, by a like vote, order the mayor to borrow a sufficient sum to provide for the expenses necessary to be incurred in making any repairs or restoration of improvements, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum and the interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor, under the sanction of the council, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall, in like manner, be added to the amount authorizized to be raised in the general tax levy of the next year, and embraced therein.

2763. No **contract** shall be hereafter made by the city council or any committee or member thereof; and no **expense** shall be **incurred** by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

2764. All money received as **special assessments** shall be held by the treasurer as a special fund, to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

2765. **Certificates of election** of all officers of cities shall be issued by the city clerk under the corporate seal upon the order of the city council at their first meeting after any election of such officers.

2766. The **city clerk** shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council; he shall also keep a record of all outstanding bonds against the city, showing the number and amount of each, for [what] and to whom the said bonds were issued; and when any bonds were purchased, or paid, or canceled, said record shall show the fact, and in his annual report he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof; he shall also perform such other duties as may be required by the ordinances of the city. He shall also make, at the end of each month, a report showing the amount appropriated to each fund and the whole amount of warrants drawn thereon, which shall be spread at large upon the records.

2767. The **treasurer** of each city shall be custodian of all money belonging to the corporation; he shall keep a separate account of each fund or appropriation and the debits and credits belonging thereto; he shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid; he shall also file copies of such receipts with his monthly reports; he shall, at the end of each and every month, and as often as may be required, render an account to the city council, under oath, showing the state of the treasury at the date of each account, the amount of money remaining in each fund, and the amount paid therefrom, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all the receipts and disbursements, together with all warrants redeemed and paid by him, which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office, and if said treasurer neglect or fail, for the space of ten days from the end of each and every month, to render his said account, his office shall be declared vacant, and the city council shall fill the vacancy by appointment until the next election for city officers.

2768. All **warrants** drawn upon the treasurer must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable, and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount levied and appropriated to the fund upon which it is draw and the amount already expended of such fund.

2769. The **city attorney** shall be the legal adviser of the council. He shall commence, prosecute, and defend suits and actions necessary to be commenced, prosecuted or defended on behalf of the corporation, or that may be ordered by the council; and when requested shall attend meetings of the council and give them his opinion upon any matter submitted to him, either orally or in writing, as may be required; *Provided*, That he shall not be required to prosecute complaints for offenses against the city ordinances in police court, except on the order of the mayor or council.

2770. **No officer** of any city shall be **interested,** directly or indirectly, **in** any **contract** to which the corporation, or any one for its benefit, is a party; and such interest in any such contract shall avoid the obligation thereof on the part of such corporation; **nor** shall any officer receive any **pay** or perquisites from the city other than his salary as provided by ordinance and this chapter; and the city council shall not pay or appropriate any money or other valuable thing, to any person not an officer, **for** the performance of any act, **service,** or duty, the doing or performance of which shall come **within** the proper **scope of** the **duties** of any officer of such corporation, unless the same is specially appropriated and ordered by a vote of three-fourths of all the members elected to the council.

Such a contract is void. Taxpayer can bring action to cancel the same, but city must pay for or return what it has received under. **28,** 858 (45 N. W., 242).

2771. All **rights** and privileges which have accrued to any city or town, held by any officer of such corporation, under or by virtue of any act of the legislature of the territory or state of Nebraska, or any act of the congress of the United States, before the taking effect of this act, are hereby preserved to such persons, cities, or towns, and when any such city or town shall be incorporated under the provisions of this act, all its said trusts, rights, and privileges shall be transmitted to and be **vested** in such latter corporation, and all actions heretofore commenced by or against any city or town which shall be or become a city of the second class under the provisions of this act shall be in no manner affected by this act, but all such actions shall be continued to final judgment and satisfaction as if this act had not been passed.

2772. The style of all **ordinances** shall be: "Be it ordained by the mayor and council of the city of ———;" and all ordinances of a general nature shall, within one month after they are passed, be published in some newspaper published within the city, or in pamphlet form, to be distributed or sold as may be provided by ordinance; and every ordinance fixing a penalty or forfeiture for its violation shall, before the same takes effect, be published for at least one week in the manner above prescribed; *Provided, however*, That in case of riot, infectious or contagious diseases, or other impending danger, or any other emergency requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor, immediately upon its first publication as above provided.

2773. In addition to the **powers** heretofore granted cities under the provisions of this chapter, each city may enact ordinances or by-laws for the following purposes:

I. To levy **taxes** for general revenue purposes, not to exceed ten mills on the dollar in any one year, on all property within the limits of said cities, taxable according to the laws of the state of Nebraska, the valuation of such property to be ascertained from the books or assessment rolls of the assessors of the proper precinct or township.

II. To levy any other tax or **special assessment** authorized by law.

III. To provide for the **grading** and repairs of any **street,** avenue, or alley, and the construction of bridges, culverts, and sewers, and shall defray the repairs of the same out of the general fund of such city, not exceeding two mills of the levy for general purposes; but no street shall be graded except the same be ordered to be done by the affirmative vote of two-thirds of the city council.

IV. To construct **sidewalks, sewers,** and drains; to curb, pave, gravel, macadamize, and gutter any highway or alley therein, and to levy a special tax on the lots and parcels of land fronting on such highway or alley, to pay the expense of such improvement. But unless a majority of the resident owners of the property subject to assessment for such improvement petition the council to make the same, such improvement shall not be made until three-fourths of all the members of such council shall, by vote, assent to the making of the same.

V. To **repair sidewalks,** and to assess the expense thereof on the property in front of which such repairs are made.

VI. To provide for the laying of **temporary** plank **sidewalks** upon the natural surface of the ground, without regard to grade, on streets not permanently improved, and to provide for the assessment of the cost thereof on the property in front of which the same shall be laid.

VII. **Assessments** made under the last three preceding subdivisions of this section shall be made and assessed in the following **manner:** *First*—Such assessment shall be made by the council at a special meeting, by a resolution fixing the valuation of such lots assessed, taking into account the benefits derived or injuries sustained in consequence of such contemplated improvements and the amount charged against the same, which, with the vote thereon by yeas and nays, shall be spread at length upon the minutes. Notice of the time of holding such meeting and the purpose for which it is to be held shall be published in some newspaper published or of general circulation in said city, at least four weeks before the same shall be held, or in lieu thereof personal service may be had upon persons owning or occupying property to be assessed. *Second*—All such assessments shall be known as "special assessments," and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, to be placed on the tax roll for collection subject to the same penalties and collected in like manner as other city taxes.

VIII. To raise revenue by levying and collecting a license **tax on** any occupation or **business** within the limits of the city, and regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed; *Provided, however,* That all scientific and literary lectures and **entertainments** shall be **exempt** from such taxation, as well as concerts and other musical entertainments given exclusively by citizens of the city.

IX. They shall collect a license **tax** of not less than one nor more than three dollars **upon** the owners and harborers of **dogs,** and enforce the same by appropriate penalties, and shall cause the destruction of any dog, the owner or harborer of which shall refuse or neglect to pay such license tax; *Provided,* That no such license shall authorize the keeping, owning, or harboring more than one dog.

X. To fix the rate of **tax** to be paid **for** the use of **water,** furnished by the city by means of water-works belonging to the city.

XI. To provide for the erection and government of any and all useful or necessary **buildings** for the use of the city.

XII. To appoint judges of all **elections** provided by ordinance for the election of city officers, and prescribing the manner of conducting the same, and the return thereof, and for deciding contested elections, and for holding special elections for any purpose herein provided.

XIII. To provide for removing officers of the city for misconduct, whose **offices** are created and made elective by this act, and shall have power to create any office that they may deem necessary for the good government and interest of the city.

XIV. To regulate the **police** of the city, and to impose **fines**, forfeitures, and penalties for the breach of any ordinance, and also for the recovery and collection of the same, and in default of payment, to provide for confinement in the city prison, or to hard labor in the city, upon the streets or elsewhere, for the benefit of the city.

XV. To regulate and prescribe the powers and duties and compensation of the **officers** of the city not heretofore provided for.

XVI. **Official bonds.**—To require from all officers and servants, elected or appointed, **bonds** and security for the faithful performance of their duties.

XVII. To make contracts, and authorize any person, company or association to erect gas or electric **light** works in said city, and give such persons, company, or associations the privilege of furnishing gas or electric light to light the streets, lanes and alleys of said city for any length of time not exceeding twenty-one years, *and to levy a tax not exceeding five (5) mills on the dollar in any one year for the purpose of paying the cost of lighting the streets, lanes, and alleys of said city.

Words "electric light" and all after * added 1891, p. 196.

XVIII. To establish, alter, and change the channels of **water**-courses and to wall them and cover them over; to establish, make, and regulate public wells, cisterns, aqueducts, and **reservoirs** of water, and to provide for filling the same.

XIX. To regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other **animals**, and to cause such as may be running **at large** to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibitions, and the expense of impounding and keeping the same, and of such sale.

XX. To provide for the erection of all needful pens, **pounds**, and buildings for the use of the city, within or without the city limits, and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

XXI. To regulate the construction of and order the suppression of and cleaning of **fire-places**, chimneys, stoves, stove-pipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business, which may be dangerous in causing or promoting fires, and to prescribe limits within which no dangerous nor obnoxious and offensive business may be carried on.

XXII. **Fire limits.**—To prescribe limits within which no building shall be constructed, except of brick, stone, or other incombustible material, with fireproof roof, and to impose a penalty for the violation of such ordinance, and to cause the destruction or removal of any building constructed or repaired in violation of such ordinance, and after such limits are established no special permit shall be given for the erection of [or] reparation of buildings of combustible material.

XXIII. To procure **fire** engines, hooks, ladders, buckets, and other apparatus, and to organize fire engine, hook and ladder, and bucket **companies**, and to prescribe rules of duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriation therefor.

XXIV. To regulate levees, depots, **depot grounds**, and places for storing freights and goods, and to provide for and regulate the passage of **railways** through the streets and public grounds of the city.

XXV. To regulate the crossing of **railway** tracks, and to provide precautions and prescribe rules regulating the same; and to regulate the running of railway engines, **cars**, and trucks within the limits of said city, and prescribe rules relating thereto, and to govern the **speed** thereof, and to make any other and further provisions, rules, and restrictions to prevent accidents at **crossings** and on the tracks of railways, and to prevent fires from engines.

XXVI. To establish standard **weights and measures**, and regulate the weights and measures to be used in the city, and to regulate the weighing and measuring of every commodity sold in the city, in all cases not otherwise provided by law.

XXVII. To provide for the **inspection** and weighing **of hay, grain,** and **coal,** the measuring of wood and fuel to be used in the city, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for sale hay, coal and wood; to fix the fees and duties of persons authorized to perform the duties named in this subdivision.

XXVIII. To remove all **obstructions** from the sidewalks, curb-stones, gutters, and cross-walks at the expense of the owners or occupiers of the ground fronting thereon, or at the expense of the person placing the same there, and to require and regulate the planting and protection of shade **trees** in the streets, the building of bulk-heads, cellar and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other **structures** projecting upon or over and adjoining, and all other excavations through and under the sidewalks in said city.

XXIX. To **prevent** and restrain riots, routs, noises, **disturbances**, or disorderly assemblies in any street, house, or place in the city; to regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent, and punish the carrying of concealed weapons; to **arrest,** regulate, punish, fine, or set at work on the streets, or elsewhere, all **vagrants** and persons found in said city without visible means of support or some legitimate business; to **regulate** and prevent the **storage of** gunpowder, tar, pitch, resin, coal **oil**, benzine, turpentine, hemp, cotton, nitro-glycerine, dynamite, petroleum or any of the productions thereof, and other material of like nature; and the use of lights in stables, shops, and other places, and the building of bon-fires; to regulate and prohibit the piling of building material, or any excavation or obstruction of the street.

XXX. To **prevent** and remove all encroachments into and upon all sidewalks, streets, avenues, alleys, and other city property; and to prevent and punish all horse **racing,** fast driving or riding in the streets, highways, alleys, bridges, or places in the city; and all **games,** practices, or amusements therein, likely to result in damage to any person or property; to regulate, prevent, and punish the riding, driving, or passing of horses, mules, oxen, cattle, or other teams, or any vehicle drawn thereby, over, upon, or across sidewalks, or along any street of the city; to regulate and prevent the **use of streets,** sidewalks, and public grounds **for signs,** sign-posts, awnings, telegraph, telephone, or other poles, racks, bulletin boards, and the posting of handbills and advertisements; to regulate traffic and sales upon the streets, sidewalks, and public places; to punish and prohibit cruelty to animals; to regulate and prevent the moving of buildings through or upon the streets.

XXXI. To take all needful steps to protect the interests of the city, present or prospective, in any **railroad** leading from or toward the same.

XXXII. To **make** all such ordinances, by-laws, **rules**, regulations, resolutions, not inconsistent with the laws of the state, as may be expedient, in addition to the special powers in this section granted, maintaining the peace, good government, and welfare of the city, and its trade, commerce, and manufactories, and to **enforce** all **ordinances** by inflicting penalties upon inhabitants or other persons for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment until the amount of said judgment and costs be paid.

XXXIII. To **appropriate** money, and provide for the payment of the debts and expenses of the city.

XXXIV. To divide the city into **wards**, establish the boundaries thereof, and number the same.

XXXV. To **open**, widen, or otherwise improve **or vacate** any **street**, avenue, alley, or lane within the limits of the city; and also to create, open, and improve any new street, avenue, alley, or lane; *Provided*, That all **damages** sustained by the citizens of the city, or the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance; *Provided further*, That whenever any street, avenue, alley, or lane shall be vacated the same shall revert to the owners of the adjacent real estate, one-half on each side thereof.

XXXVI. To **create**, open, widen, or extend any **street**, avenue, lane, or alley, or annul, vacate, or discontinue the same whenever deemed expedient for the public good, and to **take** private **property for** public **use**, or for the purpose of giving right of way or other privilege to any railroad company, or for the purpose of erecting or establishing market houses and market places, or for any other necessary public purpose; *Provided, however*, That in all cases the city shall make the person or persons whose property shall be taken or injured thereby adequate compensation therefor, to be determined as provided in section 71 of this act.

XXXVII. To **borrow money** on the credit of the city, and to pledge the credit, revenue, and public property of the city for the payment thereof, when authorized in the manner hereinafter provided.

XXXVIII. All **ordinances** shall be **passed** pursuant to such rules and regulations as the council may provide; and all such ordinances may be **proved** by the certificate of the clerk, under the seal of the city, and when printed or published in book or pamphlet form, and purported to be published by authority of the city, shall be read and received in evidence in all courts and places, without further proof. The passage, approval, and publication or posting of said ordinances shall be sufficiently proved by a certificate under the seal of the city, from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, or when and by whom, and where the same was posted up. And when ordinances are published in book or pamphlet form, purporting to be published by authority of the city council, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, as of the dates mentioned in such book or pamphlet, in all courts, without further proof.

XXXIX. To elect one of their own body, who shall be styled the **"president of the council,"** and who shall preside at all meetings of the council in the absence of the mayor; and in the absence of the president, to elect one of their own body to occupy his place temporarily, and who shall be styled "acting president of the council," and the president and acting president, when occupying the place of mayor, shall have the same privileges as other members of the council; and all acts of the president or acting president while so acting shall be as binding upon the council and upon the city as if done by the mayor.

XL. All **ordinances** of the city shall be **passed** pursuant to such rules and regulations as the council may provide, subject to the provisions of this act; and all ordinances of the city may be **proved** by the certificate of the clerk, under the seal of the city, and when printed or published in book or pamphlet form, and purported to be published by authority of the city, shall be read and received in evidence in all courts and places, without further proof.

XLI. To **purchase**, hold, and pay for, in the manner herein provided, **lands** not exceeding eighty acres in one body, outside the limits of such city, for the purpose of the burial of the dead, and all necessary grounds for **hospital** grounds and water-works.

XLII. To survey, plat, map, grade, fence, ornament, and otherwise **improve** all burial and **cemetery** grounds and avenues leading thereto, owned by such city; to construct walks therein, rear and protect ornamental trees therein, and to provide for paying the expenses thereof.

XLIII. To **convey** cemetery **lots** owned by such city, by certificates signed by the mayor and countersigned by the clerk, under the seal of the city, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number, as laid down on such map or plat, for the purpose of interment; and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot, for the sole purpose of interment, under the regulation of the city council; and such certificate shall be entitled to be recorded in the office of the register of deeds of the proper county, without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

XLIV. To **limit** the number of **cemetery lots** which shall be owned by the same person at the same time; to prescribe **rules** for inclosing, adorning, and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves, or of such lots.

XLV. To pass rules and ordinances imposing penalties and **fines** not exceeding one hundred dollars, regulating, protecting, and governing the cemetery, the owners of lots therein, visitors thereof, and **trespassers therein.** And the officers of such city shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the city itself.

XLVI. To restrain, **prohibit,** and suppress unlicensed tippling shops, billiard tables, bowling alleys, houses of prostitution, and other **disorderly houses** and practices, **games,** and gambling houses, desecrations of the Sabbath day, commonly called Sunday, and to prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon said day, and all lotteries or fraudulent devices and practices for the purpose of obtaining money or property, and all shooting galleries, and all kinds of public indecencies.

XLVII. To make regulations to **prevent** the introduction of **contagious diseases** into the city, to make quarantine laws for that purpose, and enforce the same within five miles of the city.

XLVIII. To **erect,** establish, and regulate **hospitals,** work-houses, and **poor-houses,** and to provide for the government and support of the same.

XLIX. To make **regulations to secure** the general **health** of the city, and to prevent and remove nuisances, and to provide the city with water.

L. To establish, regulate, and support **night watch** and police, and define the powers and duties of the same.

LI. To provide for and regulate the **lighting** of the **streets** and the erection of lamp posts.

LII. To purchase and own grounds for, and to **erect** and establish **market** houses and market places, and to regulate and govern the same, and also to contract with any person or persons, or association of persons, companies, or corporations, for the erection and regulation of said market houses and market places, on such terms and conditions and in such manner as the council may prescribe, and raise all necessary revenue therefor, as herein provided.

LIII. To provide, when authorized by vote of the people as provided by law, for issuing **bonds for** the purpose of **funding** any and all indebtedness, now existing or hereafter created, of the city, now due or to become due.

LIV. To make provisions for a **sinking fund** to pay accruing interest, and to pay at maturity the principal of the bonded indebtedness of the city, and to levy and collect taxes on all the taxable property in the city in addition to other taxes, for the purpose of paying the same, and to provide that the said **tax** shall be paid in cash; and whenever any city has heretofore issued bonds by virtue of any special authority derived from the legislature of the territory or state, the council shall have power to levy and collect taxes for the purpose of paying such bonds as is provided in the laws giving such authority.

LV. To provide for the **revision** of **ordinances** from time to time, and for their **publication** in pamphlet or book form, with or without the statutes relative to cities of the second class.

LVI. To **regulate**, license, or suppress **halls**, opera houses, **churches**, places of amusement, entertainment, or instruction, or other buildings used for the assembly of citizens, and to cause the same to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fires, and for escape from such place in case of fire, and to prevent the overcrowding and to regulate the placing and using of seats, chairs, benches, scenery, curtains, blinds, screens, or other appliances therein, and to provide that for any violation of any such regulation, a penalty of two hundred dollars shall be imposed, and that upon conviction of such license of any violation of any ordinance, regulating such places, the license of any such place shall be revoked by the mayor and council, and whenever the mayor and council shall by resolution declare any such place to be unsafe, the license thereof shall be thereby revoked; and the council may provide that in any case where they have so revoked a license, any owner, proprietor, manager, lessee, or person opening, using, or permitting such place to be opened or used for any purpose involving the assemblage of more than twelve persons shall, upon conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not exceeding two hundred dollars.

LVII. To prescribe the thickness, strength and **manner of constructing** stone, brick, and other **buildings**, and to prescribe the number and construction of means of exit and entrance and the number and construction of **fire escapes**, and to require the keeper or proprietor of any hotel, boarding house, or dormitory to provide or maintain such sufficient and such number of ladders, ropes, balconies, and stairways, and other appliances as by ordinance may be prescribed to facilitate the escape of persons from any such building in case of fire.

LVIII. The city council shall have power to **open**, extend, widen, narrow, grade, curb, gutter, and pave, or otherwise **improve** and keep in good repair, or cause the same to be done in any manner they may deem proper, any **street**, avenue, or alley within the limits of the city, and may grade partially, or to the established grade, or park or otherwise improve any width or part of any such street, avenue, or alley, and may also construct and repair, or cause and compel the construction and repair of sidewalks in such city, of such material and in such manner as they may deem proper and necessary; and to defray the cost and expense of such improvements or any of them, the mayor and council of such city shall have power and authority to levy and collect special taxes and assessments upon the lots and pieces of ground adjacent to, or abutting upon the street, avenue, alley, or sidewalk thus in whole or part opened, widened, curbed, guttered, graded, parked, extended, constructed, or otherwise improved or repaired, or which may be specially benefited by any of said improvements; *Provided,* That the above provisions shall not apply to ordinary repairs of streets or alleys, and one-half of the expense of bringing streets, avenues, alleys, or parts thereof, to the established grade shall be paid out of the general or road fund of the city; *Provided further,* That where any street is to be graded under the provisions of this section, but not to the established grade, it shall be done only after the owners representing a majority of the front feet of the property abutting on the part of such street to be so partially graded shall have petitioned the city council for such work to be done; *Provided, further,* That in case the grade of any street or part of street used by the public shall not have been established, or in case any street or part thereof shall not have been worked to grade, then, and in such case, the owner or owners of any lot, lots, or lands abutting on such streets or portion thereof as aforesaid may only be required to construct or repair the sidewalks along such street or part thereof with plank, as the council may direct in such case; *And provided further,* That in case the owner or owners of any such lot, lots, or land abutting on such street or portion thereof shall fail to construct or repair such sidewalks in the manner and within the time as directed and required by the council in each case, after having received due notice to do so, they shall be liable for all damages or injury occasioned by reason of the defective or dangerous condition of any such sidewalk; *And provided further,* That curbing and guttering shall not be ordered or required to be laid on any street, avenue, or alley not ordered to be paved, except on the petition of a majority of the owners of the property abutting along the line of that portion of the street, avenue, or alley to be curbed and guttered. The mayor and council of any city governed by this act shall have power to pave, repave, or macadam any street or alley or part thereof in any city, and for that purpose to create suitable **paving districts,** which shall be consecutively numbered, such work to be done under contract, and under the superintendence of the board of public works of the city. Whenever the owners of lots or lands abutting upon the streets or alleys within any paving district representing a majority of feet front thereon shall petition the council to pave, repave, or macadam such streets or alleys, it shall be the duty of the mayor and council to pave, repave, or macadam the same, and in all cases of paving, repaving, or macadamzing there shall be used such material as such majority of owners shall determine upon; *Provided,* The council shall be notified in writing by said owners of such determination within thirty days next after the passage and approval of the ordinance ordering such paving, repaving, or macadamizing. In case such **owners** fail to **designate** the **material** they desire used in such paving, repaving, or macadamizing in the manner and within the time above provided the mayor and council shall determine upon the material to be used. The **cost** of paving, macadamizing, or repaving the streets and alleys within any paving district, except the intersections of streets and space opposite alleys within such districts, shall be **assessed** upon the lots and lands abutting upon the streets and alleys in such district, in proportion to the feet front so abutting upon such streets and alleys. The assessment of the special taxes for paving purposes herein provided for shall be made as follows: The total cost of the improvement shall be levied at one time upon the property and become delinquent as herein provided: one-tenth ($\frac{1}{10}$) of the total amount shall become delinquent fifty (50) days after such levy, one-tenth ($\frac{1}{10}$) in one year, one-tenth ($\frac{1}{10}$) in two years, one-tenth ($\frac{1}{10}$) in three years, one-tenth ($\frac{1}{10}$) in four years, one-tenth ($\frac{1}{10}$) in five years, one-tenth ($\frac{1}{10}$) in six years, one-tenth ($\frac{1}{10}$) in seven years, one-tenth ($\frac{1}{10}$) in eight years, one-tenth ($\frac{1}{10}$) in nine years; each of said installments, except the first, shall draw interest at the rate of seven per cent per annum from the time of levy aforesaid until the same shall become delinquent, and after the same shall become delinquent a penalty of five per cent, together with interest at the rate of one per cent per month, shall be paid thereon, as in the case of other special taxes. Such taxes shall be collected and enforced as in other cases of special taxes. In all cases of special taxes the city treasurer shall have the right and authority, after the same or any part thereof shall have become delinquent, to seize personal property of the party who owns the real estate upon which such taxes have been levied, and to sell such personal property for the satisfaction of such taxes upon the same advertisement, and in the same manner that constables are now authorized by law to seize and sell personal property upon execution, but failure to seize or subject personal property shall in nowise affect the lien of the tax or any proceedings authorized by law to enforce the tax. In case of omissions, errors, or mistakes in making such assessment or levy in respect of the total cost of the improvement or deficiencies or otherwise, it shall be competent for the council to make a supplemental assessment and levy to supply the deficiencies, omissions, errors, or mistakes. The cost of paving, macadamizing, or repaving the intersections of streets and space opposite alleys in any paving district shall be paid by the city as hereinafter provided, but nothing herein contained shall be construed to exempt any street or other railway company from paving or repaving its whole right of way, including all space between and one foot beyond their outer rails, at its own cost, whenever any street shall be ordered paved or repaved by the mayor and council of the city as provided by law. For the purpose of paying the cost of paving, macadamizing, or repaving the streets and alleys in any paving district, exclusive of the insersections of streets and space opposite alleys therein, the mayor and council shall have power and may by ordinance cause to be issued bonds of the city, to be called "District Paving Bonds of District No. ——," payable in not exceeding ten years from date, and to bear interest, payable annually, not exceeding the rate of seven per cent per annum, with interest coupons attached, and in such case shall also provide that said special taxes and assessments shall constitute a sinking fund for the payment of said bonds and interest; *Provided*, That the entire cost of paving, repaving, or macadamizing any such streets or alleys properly chargeable to any lots or lands within any such paving district according to the front feet thereof, may be paid by the owner of such lots or lands within fifty days from the levy of such special taxes, and thereupon such lot or land shall be exempt from any lien or charge therefor. Said bonds shall not be sold for less than their par value, and if said assessment or any part thereof shall fail, or for any reason be invalid, the mayor and council may make other and further assessments, upon said lots or lands as may be required to collect from the same the cost of any paving or macadamizing properly chargeable thereto as herein provided. Whenever the mayor and council deem it expedient, they shall have power, for the purpose of paying the cost of paving, repaving, or macadamizing the intersections of streets and spaces opposite alleys in the city, to issue bonds of the city to run not more than twenty years, and to bear interest, payable semi-annually, at a rate not exceeding six per cent per annum, with coupons attached, to be called "Paving Bonds," and which shall not be sold for less than par, and the proceeds of which shall be used for no other purpose than paying for the cost of paving, repaving, or macadamizing the intersections of the streets and alleys in the city; *Provided*, That the aggregate amount of such bonds issued in any one year shall not exceed the sum of $50,000; *And provided further*, That no such bonds shall be issued until the question of issuing the same has been submitted to the electors of the city at a general or special election therein, and authorized by a vote of the majority of the electors voting at such election. If in any city governed by this act there shall be any real estate not subject to assessment or special taxes for paving purposes, the mayor and council shall have the power to pave in front of the same, and to pay the cost thereof that would otherwise be chargeable on such real estate in the same manner as herein provided for the paving of intersections of streets and paying therefor. The word "lot," as in this act used, shall be taken to mean a lot as described and designated upon the recorded plat of any such city, and in case there is no recorded plat of such city, it shall mean a lot as described and designated upon any generally recognized map of such city. The word "land" shall mean any subdivided real estate; *Provided*, That if the lots and real estate abutting upon that part of the street ordered paved, repaved, or macadamized, as shown upon any such recorded plat or map, are not of a uniform depth, or if for any other reason it shall appear just and proper to the mayor and council, the mayor and council are authorized and empowered to determine and establish the depth to which the real estate shall be charged and assessed with the cost of improvement, which shall be determined and established according to the benefits accruing to the property by reason of the improvement. Real estate may be so charged and assessed to a greater depth than the depth of the lots as shown upon any such plat or map. The mayor and council may, in their discretion, include all the real estate to be charged and assessed with the cost of such paving or improvement in the paving district in this section hereinbefore provided for, but are not required so to do, and the mayor and council may, in their discretion, in determining whether the requisite majority of the owners who are hereinbefore authorized to petition for paving, repaving, or macadamizing, and determine the kind of material to be used therefor, have joined in such petition and determination, consider and take into account all the owners of real estate to be charged and assessed with the cost of improvement, or only such as own real estate that in fact abuts upon the part of the street proposed to be improved. The provisions of this section in regard to the depth to which the real estate may be charged and assessed shall apply to all special taxes that may be levied, in proportion to the foot front in cities governed by this act. Whenever curbing, or curbing and guttering, is done upon any street or avenue in any paving district in which paving has been ordered, and the mayor and council shall deem it expedient so to do, they shall have power and authority, for the purpose of paying the cost of such curbing and guttering, to cause to be issued **bonds** of the city, to be called "Curbing and Guttering Bonds of Paving District No. —," payable in not exceeding ten years from date, and to bear interest, payable annually, not exceeding the rate of seven per cent per annum, with interest coupons attached, and in such case shall assess at one time the total cost of such curbing and guttering, or curbing, as the case may be, upon the property abutting or adjacent to the portion of the street or avenue so improved, according to special benefits, such assessments to become delinquent the same as the assessment of special taxes for paving purposes, and to draw the same rate of interest, and be subject to the same penalties, and may be paid in the same manner as special taxes for paving purposes, and the special taxes so assessed shall constitute the sinking fund for the payment of said bonds and interest, and said bonds shall not be sold for less than their par value. **No court or** judge shall grant any injunction to **restrain** the levy, enforcement, or **collection of** any special **tax** or assessment, or any part thereof, made, or contemplated being made, to pay the cost of any improvement contemplated by this section, or any other special tax provided for by this act, including those that may be levied to pay the cost of paving, repaving, or repairing between the rails of street or other railways, and their whole right of way to one foot beyond their outer rails, where such railway has more than one track in or crossing any street; and no such special taxes shall be declared void, nor shall any such assessment or part thereof be set aside, in consequence of any error or irregularity committed or appearing in any of the proceedings under this act, but any party feeling aggrieved by any such special tax or assessment or proceeding may pay the said special taxes assessed and levied upon his, her, or its property, or such installments thereof as may be due, at any time before the same may become delinquent, under protest, and with notice in writing to the city treasurer that he intends to sue to recover the same back, which notice shall particularly state the alleged grievance and the ground thereof; whereupon such party shall have the right to bring a civil action within sixty days thereafter, and not later, to recover back so much of the special taxes paid as he shall show to be illegal, inequitable, and unjust, the cost to follow the judgment or to be apportioned by the court as may seem proper, which remedy shall be exclusive. The city treasurer shall promptly report all such notices to the city council for such action as may be proper. No court shall entertain any complaint that the party was authorized to make, and did not make, to the city council, sitting as a board of equalization, nor any complaint not specified in said notice fully enough to advise the city of the exact nature thereof, nor any complaint that does not go to the groundwork, equity, and justice of the tax. The **burden of proof** to show such tax, or part thereof, invalid, inequitable, and unjust shall rest upon the party who brings such suit; *Provided,* That all grading, paving, macadamizing, or guttering of any streets, avenues, or alleys in the city, for which, or any part thereof, a special tax shall be levied, shall be done by **contract** with the **lowest** responsible **bidder,** to be determined by the council; *Provided further,* That the cost and expense of grading, filling, paving, culverting, curbing, guttering, or otherwise improving, constructing, or repairing streets, avenues, alleys, and sidewalks at their intersections, may be included, in the special tax levied for the construction or improvement of any one street, avenue, alley, or sidewalk, as may be deemed best by the council; *Provided further,* That such special taxes shall be due and may be collected as the improvements are completed in front of, or along, or upon any block, or piece of ground, or at the time the improvement is entirely completed, or otherwise, according as shall be provided in the ordinance levying the tax; *Provided further,* That when any special tax is levied it shall be the duty of the city engineer to calculate the amount of the tax thus due on each lot, part of lot, or piece of ground, subject to same, and file a statement thereof with the city clerk, who, as soon as said tax is due on any lot or piece of ground, shall issue a certificate describing such lot or piece of ground by number and block, and stating amount of special tax due thereon, and the purpose for which tax was levied, and shall forthwith deliver a duplicate of such certificate to the city treasurer, who shall, without delay, give at least five days' notice through a newspaper published in the city, of the time when such tax shall become delinquent; to every such certificate the city clerk shall append a warrant in the usual form, requiring the city treasurer to collect such special tax or taxes by distress and sale of the goods and chattels of the person or persons, or bodies corporate, owing any such special tax or taxes, if the same be not paid before the time fixed for the same to become delinquent, and to make his return of such warrant with his doings thereon on or before the 15th day of July next thereafter; *Provided further*, That it shall be sufficient in any case to describe the lot or piece of ground as the same is platted or recorded, although the same belong to several persons, but in case any lot or piece of ground belong to different persons, the owner of any part thereof may pay his proportion of the tax on such lot or piece of ground, and his proper share may be determined by the city treasurer; *Provided further*, That when any improvement mentioned in this subdivision is completed according to contract, it shall be the duty of the city engineer to carefully inspect the same, and if the improvement is found to be properly done, such engineer shall accept the same, and forthwith to the board of public works, who shall report the same to the council with recommendation that the same be approved or disapproved, and the city council may confirm or reject such acceptance. When the ordinance levying the tax makes the same due as the improvement is completed in front of or along any block or piece of ground, the engineer may accept the same in sections from time to time, if found to be done according to contract, reporting his acceptance as in other cases; *Provided, also*, That all **street railway** companies now existing or hereafter created, in any city governed by this act, or that shall hereafter be organized thereunder, shall be required to **pave** or repave between and to one (1) foot beyond their outer rails, or in case said railway uses more than one (1) track in any street, they shall pave between and to one (1) foot beyond their outer rails where such company owns, at their own cost. Whenever any street shall be ordered paved or repaved by the mayor and city council of such city, such paving or repaving shall be done at the same time, and shall be of same material and character as the paving or repaving of the street upon which said railway track is located, unless other material be specially ordered by the board of public works. Such street railway companies shall be required to keep that portion of the street required by them to be paved in repair, using for said purpose the same material as the street upon which the track is laid at the point of repair, or such other material as the board of public works may require and order upon streets in cities governed by the act. As streets are hereafter required to be paved or repaved, street railway companies shall be required to lay, in the best approved manner, the strap or flat rail. The **track** of all railway companies, when located upon the streets or avenues of the city, shall be **kept** in repair and **safe** in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such tracks in repair, or for obstructing the streets or avenues of such city. For injuries to persons or property arising wholly from the failure of such company to keep their tracks in proper repair and free from obstructions, such companies shall be liable and the city shall be exempt from liability. The words "street railway company," as used in this act, shall be taken to mean and include any persons, companies, corporations, or associations owning any street railway in any such city. In the event of the refusal or neglect of such street railway companies to pave, repave, or repair when so directed by the mayor and council, upon the paving or repaving of any street upon which their track is laid, the mayor and council shall have power to pave, repave, or repair the same, and the cost and expense of such paving, repaving, or repairing may be collected by levy and sale of any real or personal property of said street railway company, the same as special taxes are collected. **Special taxes** for the purpose of paying the cost of any such paving, repaving, macadamizing, or repairing of any such street railway may be **levied upon** the **track**, including the ties, iron, road-bed, and right of way, side track and appurtenances, including buildings and real estate belonging to any such company or person, and used for the purpose of such street railway business, all as one property, or upon such part of such tracks, appurtenances, and property as may be within the district paved, repaved, macadamized, or repaired, or any part thereof, and shall be a lien upon the property upon which levied from the time of the levy until satisfied. No mortgage, conveyance, pledge, transfer, or incumbrance of any such property of any such company or person, or any of its rolling stock or personal property, created or suffered by any such company, or party, after the time when any street or part thereof, upon which any such street railway shall have been laid, shall have been ordered paved, repaved, macadamized, or repaired, shall be made or suffered, except subject to actual or prospective lien of such special taxes, whether actually levied or not, if such levy be in contemplation. The treasurer shall have the power and authority to seize any personal property belonging to any such person or company for the satisfaction of any such special taxes when delinquent, and to sell the same upon the same advertisement and in the same manner as constables are now authorized to sell personal property upon execution at law, but failure so to do shall in nowise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate upon which such special taxes may be levied, or may be sold. It shall also be competent for any such city to bring a civil action against any party owning or operating any such street railway and liable to pay such taxes, to recover the amount thereof, or any part thereof delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment and have execution therefor, and no property, real or personal, shall be exempt from any such execution; *Provided*, That real estate shall not be levied upon by execution, except by execution out of the district court on a judgment therein, or transcript of a judgment filed therein, as now provided by law. **No property seized** by the treasurer as hereinbefore provided, or upon any such execution, shall be taken from the officer holding the same on any order of **replevin.** No defense shall be allowed in any such civil action, except as goes to the groundwork, equity, and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special tax shall be shown to be invalid, unjust, and inequitable, judgment shall be rendered for such amount as is just and equitable, and costs shall follow the judgment. It shall be competent for the mayor and council, upon the written application of any company, association, corporation, or person owning any such street railway, to provide that such special taxes shall become delinqent and payable in installments, as in case of taxes levied upon abutting real estate as hereinbefore provided, but such application shall be taken and deemed a waiver of any and all objections to such taxes and to the validity thereof. Such application shall be made at or before the final levy of such taxes. The provisions of this act in regard to the levy, collection, and enforcement of special taxes to pay the cost of paving, repaving, macadamizing, or repairing of any such street railways shall apply to all such special taxes hereinafter levied.

This subdivision was added 1887, p. 310. Before bonds can be registered, law must be strictly complied with. **25,** 504 (41 N. W., 450); **25,** 279 (41 N. W., 155); **25,** 756 (41 N. W., 953). Provision exempting city from liability for negligence of street railway, void, not being within title of act. **29,** 379 (45 N. W., 694). See **4,** 343.

LIX To create a **board** of **public works** which shall consist of three members, residents of such city, to be appointed by the mayor, by and with the assent of the council, before the first Monday in June, 1887, for the term of one, two, and three years respectively, the term of office of each to be designated by the mayor, and annually thereafter there shall be appointed, as herein provided, one member whose term of office shall be three years. The mayor, by and with the assent of the council, shall designate one of the members of such board to be the chairman thereof. The salaries of the members of such board of public works shall be fixed by ordinance, and the salary of the chairman shall not exceed five hundred dollars per annum, and the salary of each of the other members shall not exceed one hundred dollars ($100) per annum. Each of the members of such board shall, before entering upon the discharge of his duties, take an **oath** to faithfully discharge the duties of his office, and enter into a bond to such city, with two or more good and sufficient sureties, to be approved by the mayor and council, the **bond** of the chairman to be in the sum of five thousand dollars ($5,000), and the other two in the sum of three thousand dollars ($3,000) each, conditioned for the faithful performance of his duties as a member of the board of public works. No member of such board shall ever be directly or indirectly interested in any contract entered into by them on behalf of such city, nor shall they be interested, either directly or indirectly, in the purchase of any material to be used or applied in and about the uses and purposes contemplated by this act. It shall the **duty** of the board of public works, and it shall have power to make contracts on behalf of the city, for the performance of all such work and the erection of all such improvements as may be ordered by the mayor and council, but only with the approval of the mayor and council; to superintend the performance of all such work and the erection of all such improvements; to approve the estimates of the city engineer, which may be made from time to time, of the value of the work as the same may progress; to accept any work done or improvement made, when the same shall be fully completed according to contract, subject, however, to the approval of the mayor and council; and to perform such other duties as may be conferred upon them by ordinance. Any member of such board may at any time be removed from office by a vote of two-thirds of the members elected to the council, or by the mayor and a majority of the council, and the proceedings in that behalf shall be recorded in the journal of the council.

This subdivision was added 1887, p. 326.

2774. Each city governed by this chapter is hereby empowered to provide that all male residents of the corporation, between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of November of each year, either by themselves or satisfactory substitute, perform two days' **labor** upon the streets, alleys, or highways within such corporation, at such time and places as the proper officer may direct, and upon three days' notice in writing given; *Provided*, That all persons so notified may commute the labor so required by the payment of the sum of three dollars to the proper officer of such city, as may be provided by ordinance, and the fund arising under this section shall be expended by the city authorities in the repair and maintenance of the streets and alleys and highways in said city. They may further provide that for each day's failure to attend and perform the labor as required at the time and place specified the delinquent shall forfeit and pay to the corporation any sum not exceeding one dollar for each day's delinquency. The amount so due for labor **tax** to the amount of three dollars, upon the failure to labor or commute as above required, shall be treated and collected as taxes on property, and the same shall be a **lien** on all the property of such persons as may be listed and assessed for taxation for that year; and it shall be the duty of the city council to certify the amount due from each individual as aforesaid to the county treasurer, as hereinbefore provided, and the certificate of the city clerk, under the seal of the city, that the person named therein has performed the labor, or commuted as herein required, shall be received by the county treasurer in discharge of the amount due from such person. The fund arising under this section shall be paid into the fund hereinbefore created from taxes levied for road purposes, and shall be treated and expended in the same manner.

2775. To lay off the city into suitable **districts** for the purpose of establishing a system of sewerage and drainage; to provide such system and regulate the construction and repairs and use of **sewers** and drains and of all proper house connections and branches, and provide penalties for any obstruction of or injury to any sewer or part thereof.

2776. **All** grading, paving, macadamizing, or guttering of any streets, avenues, or alleys, and the constructing of all culverts, sewers, and drains in the city, for which, or any part thereof, a special tax shall be levied, shall be done by **contract** with the **lowest** responsible **bidder,** to be determined by the council.

2777. The mayor and council shall also have power to **require** any and all **lots** or pieces of ground within the city to be **drained** or filled, so as to prevent stagnant water or any other nuisance accumulating thereon; and upon the failure of the owners of such lots or pieces of ground to fill or drain the same when so required, the council may cause such lots or pieces of ground to be drained or filled, and the cost and the expense thereof shall be levied upon the property so filled or drained, and collected as other special taxes.

2778. The mayor and council shall have power to **require** the **lighting** of any railway **within** the **city,** the cars of which are propelled by steam, in such manner as they shall prescribe, and may fix and determine the number, style, and size of the lamp posts, burners, lamps and all other fixtures and apparatus necessary for such lighting, and the points of location for such lamp posts; and in case the company owning or operating such railway shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien on any real estate belonging to such company and lying within such city, and may be collected in the manner as taxes for general purposes; to require railroad companies to keep flagmen at all railroad crossings of streets, and to provide protection against the injury to persons and property in the use of such railroads; to compel any railroad to raise or lower their railroad tracks to conform to the general grade which may at any time be established by such city, and where such tracks run lengthwise through or over any street, alley, or highway, to keep the same level with the street surface; to compel and require railroad companies to keep open the streets, and to keep in repair ditches, drains, sewers, and culverts along and under their railroad tracks.

2779. **Special taxes** may be levied by the mayor and council for the purpose of paying the cost of constructing **sewers** or drains within the city, such taxes to be levied on the real estate lying and being within the sewerage districts in which such sewer or drain may be situated, to the extent of benefits to such property by reason of such improvement, the benefits to such property to be determined by the council, sitting as a board of equalization, after notice to property owners as in other cases of special **assessment** provided, and in cases where the council, sitting as such board of **equalization,** shall find such benefits to be equal and uniform, such levy may be according to the front foot of the lots or real estate within such sewerage district, or according to such other rule as the council, sitting as a board of equalization, may adopt for the distribution or adjustment of such cost, upon the lots or real estate in such district benefited by such improvement, and all taxes or assessments made for sewerage or draining purposes shall be collected in the same manner as other special assessments, and shall be subject to the same penalty. And when sewers are constructed and any assessment to cover the cost thereof shall be declared void, or doubts exist as to the validity of such assessment, the mayor and council, for the purpose of paying the cost of such improvement, are hereby authorized and empowered to make a re-assessment of such costs on the lots or real estate lying and being within the sewerage district in which any such sewer may be situated, to the extent of the benefits to such property by reason of such improvement, and such re-assessment shall be made substantially in the manner provided for making original assessments of like nature as herein provided, and any sums which may have been paid toward said improvement, upon any lots or real estate included in such re-assessment, shall be applied, under direction of the council, to the credit of the persons and property on account of which the same was paid, and in case the credit shall exceed the sum re-assessed against such persons and property as herein provided for, the council shall cause such excess, with lawful interest, to be refunded to the party who made payment thereof, and the taxes so re-assessed, and not paid under a prior assessment, shall be collected and enforced in the same manner as other special taxes, and shall be subject to the same penalty.

Amended 1887, p. 328.

2780. Special **assessments** shall not be levied in any one fiscal year upon any lot or piece of ground in the city, to an amount exceeding in the aggregate five per cent of the value of such lot or piece of ground at the close of such fiscal year, such value to be determined by three disinterested freeholders, to be appointed by the mayor and council as commissioners for that purpose in every case of complaint of **excessive** assessment.

2781. The mayor and council shall cause to be **published** semi-annually a **statement** of the receipts of the city and sources thereof, and an itemized account of the expenditures and the financial condition of the city.

2782. The council or any committee of the members thereof shall have the power to **compel** the attendance of **witnesses** for the investigation of matters that may come before them, and the presiding officer of the council or the chairman of such committee, for the time being, [may] administer the requisite oaths; and such council or committee shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

2783. **Fines** may in all cases, and in addition to any other mode provided, be **recovered by suit** or action before a justice of the peace, or other court of competent jurisdiction, in the name of the state. And in any such suit or action, when pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be the facts of the alleged violation.

2784. Any **city** shall have the right to **use** the **jail of** the county for the confinement of such persons as may be liable to imprisonment under the ordinances of said city, but it shall be liable to the **county** for the cost of keeping such prisoners.

2785. All **suits for** the **recovery of** any **fine** and prosecution for the commission of any offense, made punishable as herein provided, shall be **barred** in one **year** after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

2786. The **mayor** shall have such **jurisdiction** as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of **health** or quarantine ordinance, and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation within one-half mile of the corporate limits of said city.

2787. The mayor and council shall have power to **borrow money** and pledge the property and credit of the city upon its negotiable bonds or otherwise, to an amount not exceeding in the aggregate one hundred thousand dollars ($100,000), for the purpose of constructing or **aiding** in the construction of a system of **sewerage,** authority therefor having first been obtained by a majority vote of the people at an election or elections upon a proposition or propositions submitted in the manner provided by law for the submission of propositions to aid in the construction of railroads and other works of internal improvement, and to borrow money and pledge the property and credit of the city in the manner aforesaid, and upon being authorized as aforesaid, to an amount not exceeding one hundred and twenty-five thousand dollars ($125,000), for the purpose of constructing, maintaining, extending, and operating a system of water-works for said city. *The indebtedness authorized by this act shall be the limit of liability which any city governed thereby shall in any manner contract for the purposes aforesaid, and shall include all indebtedness previously contracted for said purposes.

Amended and all after * added 1891, p. 197.

2788. Before submitting any proposition for borrowing of money for either of the purposes mentioned in the preceding section, the mayor and council shall determine upon and **adopt a system** of sewerage, or water-works, as the case may be, and shall procure from the city engineer an **estimate** of the actual **cost** of such system and of the cost of so much thereof as the mayor and council may propose to construct, with the amount proposed to be borrowed and the plans of such system, and such estimate shall be placed and remain in the hands of the city clerk, subject to public inspection during all the time such proposition to borrow money shall be pending. After such system shall have been adopted, no change shall be made therein involving an expense of more than five hundred dollars, nor shall any other system be adopted in lieu thereof, unless authorized by a vote of the people.

2789. When a system of water-works shall have been adopted and the people shall have voted to borrow money to aid in their construction as aforesaid, the mayor and **council** may **erect,** construct, and **maintain** such **system** of water-works, either within or without the corporate limits of the city, and make all needful **rules** and regulations concerning the use of such water-works, and to do all acts necessary for the construction, completion, and management and control of the same, not inconsistent with this act, including the taking of private property for public use for the construction and operation of the same, compensation to be ascertained and made therefor in the manner provided by law for acquiring the right of way and depot grounds for railroad companies by the exercise of the right of eminent domain.

2790. In case such **aid** shall **not** be **voted** by the people in the manner aforesaid, the mayor and council may **contract** with and procure individuals or corporations **to construct** and maintain a system of water-works in such city for any time not exceeding twenty years from the date of the contract, and with a reservation to the city of the right to purchase such water-works at any time after the lapse of ten years from the date of the contract, upon payment to such individuals or corporation of an amount to be determined from the contract, not exceeding the cost of construction of such water-works; in other respects such contracts may be upon such terms as may be agreed upon by a two-thirds vote of the mayor and council, entered upon the minutes; *Provided,* That no such contract shall be made unless thereunto authorized by a majority vote of the legal voters of said city at a special election called for such purpose.

2791. No **bonds** issued by the city for any purpose shall draw **interest** at a greater rate than six (6) per cent per annum, for less than par or face value.

2792. All bonds issued by the mayor and council shall be **redeemable** at the option of the city at any time after five years from their date.

2793. Before the mayor and council shall enter upon the construction of any system of water-works a **water commissioner** shall be appointed, who shall give bonds in not less than the sum of five thousand dollars.

2794. Such water **commissioner,** under the direction and supervision of the mayor and council, shall **have** general management and **control** of such system of water-works, and of the erection and construction of the same, fixing the rates within such limits as may be prescribed by ordinance, to be paid by the inhabitants of the city for the use of water, water-meters, and hydrants. It shall be his duty to collect all moneys receivable by the city on account of said system of water-works, and to faithfully account for the same, and pay the same over to the treasurer, taking his receipt therefor in duplicate, and filing one of the same with the city clerk; to make a detailed report to the council at least once in six months, of the condition of said water system, and of all mains, pipes, hydrants, reservoirs, and machinery, and recommending such improvements, repairs, and extensions thereof as he may think proper, and showing the amount of the receipts and expenditures thereof for the preceding six months, and no money shall be expended upon, or for the erection, construction, improvement, or extension of said system of water-works, except upon the written recommendation of such water commissioner, nor shall any bill or claim for any work or material done or furnished for said system of water-works be paid or allowed in whole or in part, except as the same shall have been first audited and allowed by said water commissioner. Said water commissioner shall perform such other duties as may be required of him by ordinance, and upon his recommendation the mayor and council may employ such laborers and clerks as to them may appear necessary.

2795. **No member** of the council or the mayor shall be **eligible** to the office of water commissioner during the term for which he shall be elected.

2796. When any **bonds** shall have been issued by the city for the purpose of constructing or aiding in the construction of a system of water-works or a system of sewerage, there shall thereafter be levied annually upon all the taxable property of said city a **tax** of not less than one mill nor more than two mills for every twenty thousand dollars of bonds so issued, which shall be known as the water-works tax, or sewerage tax, as the case may be, and shall be payable only in money. The proceeds of such tax, together with all income received by the city from the water-works, and from the payment and collection of water rent, taxes, and rates or assessments, and shall first be applied to the payment of the current expenses of water-works and interest on money borrowed and bonds issued for their construction, and the surplus, if any, shall be retained as a sinking fund for the payment of such loans or bonds at maturity.

2797. The mayor and council may by ordinance license, restrain, regulate or prohibit the selling or giving away of malt, spirituous, or vinous, mixed, fermented, or intoxicating **liquors,** the **license** not to extend beyond the municipal year for which it shall be granted, and to determine the amount to be paid for such license not less than the minimum sum required by any general law upon the subject; *Provided,* That special **permits** may be granted to **druggists** for the sale of liquors for medicinal and mechanical purposes; *And provided further,* That all such licensees, except druggists, shall be required to give bonds in all respects, and they and their sureties shall be liable on such bond in all respects, as in case of persons to whom licenses for the sale of intoxicating liquors are or may be granted by county boards, and all the restrictions, regulations, forfeitures, and penalities provided by law respecting the sale of liquors by persons licensed therefor by the county boards shall apply to and govern persons, except druggists, licensed by virtue of this section, and any person selling or giving away in said city any liquor of the description mentioned in this section without first having complied with such regulations, and procured a license or permit therefor, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not more than one hundred dollars for each offense, and be committed to the city jail until such fines and costs are paid; *Provided*, That any permits issued to a druggist may be revoked by the council at pleasure; *And further*, That any license issued by the mayor and council for any purpose mentioned in this section may be revoked by the mayor and council upon conviction of the licensee of any violation of any law, ordinance or regulation pertaining to the sale of such liquors.

2798. When any city personalty tax shall have been **delinquent** for the term of six months or longer, the mayor or council may, if they see fit, appoint one or more delinquent **tax collectors**, who shall serve during the pleasure of the mayor and council, and shall have the same powers and receive the same compensation for the collection of such taxes as the county treasurer would have had or done in case such appointment had not been made. All taxes received by such collectors shall be paid over to the county treasurer at least every week, and the county treasurer shall be entitled to no compensation in relation to moneys so collected; but such appointment shall not deprive the county treasurer of any of his powers or duties or relieve him of any obligation with respect to the collection of such delinquent taxes as shall not be in fact collected by such collectors. The mayor and council may by a three-fourths vote increase the compensation of such delinquent tax collectors to an amount not exceeding ten per cent of any tax or taxes collected by him or them. The county treasurer shall, whenever required by a vote of the city council, make and furnish to them a detailed statement of all delinquent city taxes appearing upon any of the records of his office.

2799. All **taxes** levied for the purpose of raising money to pay the interest or to create a sinking fund for the payment of the principal of any funded or bonded debt of the city shall be **payable in money** only, and, except as otherwise expressly provided, no moneys so obtained shall be used for any other purpose than the payment of the interest or debt for the payment of which they shall have been raised; *Provided*, That such **sinking fund** may, under the direction of the mayor and council, be invested in any of the under-due bonds issued by the city, provided they can be procured by the treasurer at such rate or premium as shall be prescribed by ordinance; *And provided further*, That any due or overdue bond or coupon shall be a sufficient warrant or order for the payment of the same by the treasurer out of any fund specifically created for that purpose, without any further order or allowance by the mayor or council.

2800. The mayor and council shall not allow or **pay for** the **printing** of any notice, advertisement, or publication in any newspaper any greater sum or rate than twenty-five cents per square of unleaded nonpareil type.

2801. The mayor and council may, whenever they deem it expedient, employ a **special engineer** to make or assist in making any particular estimate or estimates, survey or surveys; and any estimate or survey made by such special engineer shall have the same validity, and serve in all respects as though the same had been made by the city engineer.

2802. The **police judge** shall have exclusive **jurisdiction** to hear and determine all offenses against the ordinances of the city, and concurrent and co-extensive jurisdiction with county courts of all ordinary civil actions and criminal proceedings; and all provisions of law relative to practice, process, and judgments, and appeals therefrom, and stays of execution relative to county courts, shall apply to and govern the police court in civil actions, and summons in civil action shall be returnable, and such cases shall stand for trial as in justice's courts.

2803. Whenever complaint shall be made to the police judge, on oath or affirmation of any person competent to testify against the accused, that an offense has been committed, of which the police judge has jurisdiction, the police judge shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the city marshal, or the sheriff, or a constable of the county, or some person specially appointed by the police judge for that purpose.

2804. All fines and penalties collected arising from a breach of ordinances of the city shall be paid to the city treasurer, and all fines and penalties collected arising from misdemeanors under the laws of the state shall be paid to the county treasurer, and the police judge shall report at the end of each calendar month a list of all cases for violation of city ordinances instituted in his court and the disposition thereof, with a statement of the fines, penalties, and costs by him received, and shall at the end of each month pay to the city treasurer all such fines by him received, and in the event that the police judge shall fail to make report as herein provided, for a period of ten days, his office shall be declared vacant.

2805. When any person shall be brought before the police judge upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

2806. Upon good cause shown the police judge may postpone the trial of the case to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned that he will appear before said judge at the time and place appointed, then and there to answer the complaint alleged against him.

2807. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified to the district court of the proper county, to be proceeded upon according to law; if in the progress of any trial before the said judge it shall appear that the accused ought to be put upon his trial for an offense not cognizable before said judge, he shall immediately stop all further proceedings before him and proceed as in other cases exclusively cognizable before the district court.

2808. It shall be the duty of said judge to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by atachment, if necessary, and all witnesses shall receive the sum of fifty cents for each day's attendance.

2809. Cases in the police court for violation of the city ordinances shall be tried and determined by the police judge without the intervention of a jury; cases of misdemeanor under the statutes of the state shall be tried by the police judge alone, unless the defendant demands a jury; if a jury be demanded, the case shall be tried by a jury of six competent men, unless a smaller number be agreed to by the defendant, to be selected in the manner provided by law for selecting jurors in justices' courts, and the trial of all such cases before said police judge shall be conducted in all respects not herein otherwise provided, in like manner as criminal cases before justices of the peace. Jurors in the police court shall receive the same fees as jurors in justices' courts, to be taxed as other costs are taxed in the case.

2810. If the defendant be found guilty, the police judge shall declare and assess the punishment, and render judgment accordingly. It shall be part of the judgment that the defendant stand committed until judgment be complied with; *Provided*, That in any prosecution for the violation of any ordinance, the defendant shall have the right to produce before said police judge one or more sureties, to the satisfaction of said judge, which said sureties shall, with the defendant, confess a judgment for the amount of the fine or penalty imposed, with costs of suit; and said judge shall enter said confession of judgment upon his docket, and render judgment accordingly, in the name of the state of Nebraska, against them for the amount of such fine and costs; and if said judgment be not paid within ninety days from the date of such confession and entering of judgment, said police judge shall issue execution and collect the amount of said fine, or penalty and costs, in the manner provided by law for collecting judgments by execution in justices' courts.

2811. Any **defendant** committed under the provisions of this act for a misdemeanor arising under the laws of this state may be **discharged** in the same manner as if he had been committed by the county court.

2812. In all cases not herein specially provided for, the process and **proceedings,** before the judge shall be governed by laws regulating proceedings in county courts in civil and criminal cases respectively.

2813. When a trial shall be continued by the judge it shall not be necessary to summon any witnesses who may be present at the **continuance**, but the judge shall verbally notify such witnesses as either party may require to attend before him to testify in the case on the day of trial, which verbal notice shall be as valid as a summons.

2814. In trials by a **jury** before the police judge, **challenges** shall be allowed in the same manner as in similiar cases before the county court.

2815. The police judge shall be a conservator of the peace, and his **court** shall **be open** every day except Sunday, to hear, try, and determine all cases cognizable before him, and he shall have power to bring parties forthwith to trial.

2816. Any **person convicted** before the judge of any offense under the ordinances of the city shall be punished by such **fine** and imprisonment as may be regulated by ordinance.

2817. **Appeals** may be taken from the judgments of the police judge in criminal cases, and under ordinances in the same manner as appeals are taken from justices of the peace in criminal cases.

2818. The **police judge** shall have **power** to enforce due obedience to all orders, rules, judgments, and decrees made by him, and may fine or imprison for contempt offered to such judge whilst holding his court, or to process issued by him, in the same manner and to the same extent as the district courts.

2819. Whenever the **defendant** is sentenced to imprisonment for the violation of a city ordinance, he shall be put to **work** for the benefit of the city, under the direction of the mayor, for the term of his imprisonment, and when committed for the non-payment of a fine or costs for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs $1.50 per day for each day he shall work.

2820. In case of a **vacancy** in the office of police judge by death, resignation, or otherwise, or in case of the absence, disability, or personal interest of said judge, such fact being shown by affidavit, the mayor shall, on notice thereof, appoint some justice of the peace, holding and exercising the duties of his office, within the corporate limits of such city, to act as police judge during such vacancy, absence, or disability of said police judge.

B. 1,000 TO 5,000.

Secs. 2821 to 2835. "An act to provide for the organization, government, and powers of cities and villages." 1879, p. 193. In force September 1.

2821. All cities, towns, and villages containing more than one thousand and less than twenty-five thousand **inhabitants** shall be cities of the second class and be governed by the provisions of this chapter, unless they shall adopt a village government as hereinafter provided; **Provided*, That all cities in this state, organized under the provisions of "An act to provide for the organization, government, and powers of cities of the second class having more than ten thousand inhabitants," approved March 1st, 1883, or any act amendatory thereof, shall not be affected by the provisions of this act.

Original act read "1,500 and less than 15,000." Amended and all after * added 1885, p. 156. No special steps necessary to act under this law. Must have at least two wards. 19, 249 (27 N. W., 120); 25, 713 (41 N. W., 450). Cited 10, 204 (4 N. W., 965).

2822. Each city of the second class shall be divided into not less than two nor more than six **wards**, as may be provided by ordinance of the city council thereof, and each ward shall contain, as nearly as practicable, an equal number of legal voters, and an area as equal to each other as practicable.

2823. The **council** of each city of the second class shall consist of not less than four nor more than twelve citizens of said city, who shall be qualified electors and taxpayers under the constitution and laws of the state of Nebraska.

2824. Each ward in each city shall have at least two **councilmen**, who shall be chosen by the qualified electors of their respective wards, and who shall serve for two years, and until their successors shall be elected and qualified; and no person shall be eligible to the office of councilman who is not at the time of his election an actual resident of the ward for which he is elected, and a qualified elector under the constitution and laws of the state of Nebraska; and if any councilman shall remove from the ward for which he is elected, his office as a councilman shall thereby become vacated; *Provided*, At the first general city election under this chapter, there shall be two councilmen elected from each ward; the one receiving the greatest number of votes shall serve for two years, and the one receiving the next highest number of votes shall serve for one year, and one councilman for each ward at each annual election thereafter. Whenever there shall be a tie in the election of councilmen, it shall be determined by lot by judges of election of the ward in which it shall happen.

2825. Regular **meetings** of the city council shall be held at such times as the council may provide by ordinance.

2826. [**Officers.**]—At the time of holding the general city election in each year there shall be elected a mayor, a clerk, a treasurer, a city engineer, and the councilmen hereinbefore provided for, and a police judge shall be elected at each biennial city election; and the mayor, with the consent of the council, may appoint a city attorney and an overseer of streets, who shall hold their offices for one year unless sooner removed by the mayor with the advice and consent of the council. The mayor, by and with the consent of the council, shall appoint such a number of regular policemen as may be necessary, and may also appoint special policemen from time to time as exigencies arise. All police officers appointed by the mayor and council, in accordance herewith, shall be removable at any time by the mayor.

Amended 1891, p. 168.

2827. The **salaries** of all officers of the city shall be fixed by ordinance, not exceeding the following amounts respectively: clerk, three hundred dollars ($300) per year; treasurer, three hundred dollars ($300) per year; city engineer, four dollars ($4) per day for actual services, but not exceeding three hundred dollars ($300) per year; overseers of streets, two [dollars] ($2) per day for actual services, but not exceeding three hundred dollars ($300) per year; city attorney, two hundred and fifty dollars ($250) per year; chief of police, sixty-five dollars ($65) per month, which shall include his compensation as overseer of streets; policemen, fifty-five dollars ($55) per month; mayor, two hundred dollars ($200) per year, and councilmen, each the sum of fifty dollars ($50) per year. All other officers and employees of the city shall receive such compensation as the mayor and council may fix at the time of their appointment or employment.

Amended by changing amounts, adding chief of police, and allowing mayor and council. 1881, p. 169.

2828. The **police judge** shall receive the same **fees** as justice of the peace for similar services.

2829. All **officers** shall be **qualified** electors and taxpayers and reside within the limits of the city.

2830. The **mayor** shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided, and none other, and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and of this chapter are complied with.

Mayor and council have power to settle claims against city. **27**, 455 (43 N. W., 244). The mayor's vote will not carry an ordinance not otherwise carried. **23**, 369 (36 N. W., 577).

2831. The mayor shall have power to **veto** or sign any ordinance passed by the city council; *Provided*, That any ordinance vetoed by the mayor may be passed over his veto by a vote of two-thirds of the members of the council elected notwithstanding the veto; and should the mayor neglect or refuse to sign any ordinance, and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become a law without his signature.

Mayor should execute all ordinances, etc., whether they meet his approval or not. **27**, 456 (43 N.W., 244).

2832. He shall, from time to time, communicate to the city council such information and **recommend** such **measures** as, in his opinion, may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort, and general prosperity of the city.

2833. The mayor or any three councilmen shall have power to call **special meetings** of the city council, the object of which shall be submitted to the council in writing, and the call and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

2834. The mayor shall have the power, when he deems it necessary, to require any **officer** of the city to exhibit his **accounts** or other papers, and to make reports to the council in writing, touching any subject or matter he may require pertaining to his office.

2835. The **mayor** shall have such **jurisdiction** as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation, within one-half mile of the corporate limits of said city.

2836. In case of any **vacancy** in the office of mayor, or in case of his absence or disability, the president of the council, for the time being, shall exercise the office of mayor until such vacancy be filled or such disability be removed, or in case of temporary absence, until the mayor shall return.

2837. The mayor is hereby authorized to **call** on every male inhabitant in the city over eighteen years of age, and under fifty years, to **aid** in enforcing the laws.

2838. The mayor shall have power to **remit fines** and forfeitures, to **grant** reprieves and **pardons** for all offenses arising under the ordinances of the city.

2839. The **policemen** of the city shall have **power** to arrest all offenders against the laws of the state, or of the city, by day or by night, in the same manner as the sheriff or constable, and keep them in the city prison or other place, to prevent their escape, until trial can be had before the proper officer.

2840. The **city engineer** shall make estimates of the cost of labor and materials which may be done, or furnished by contract with the city, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, bridges, curbings, and gutters, and the improvement of streets, and the erection and repair of buildings, and shall perform such other duties as the council may require. Before the city council shall make any contract for building bridges or sidewalks, or for any work on the streets or for any other work or improvement, an estimate of the cost thereof shall be made by the city engineer and submitted to the council, and no contract shall be entered into for any work or improvement for a price exceeding such estimate, and in advertising for bids for any such work the council shall cause the amount of such estimate to be published therewith.

Estimate of cost must be made by city engineer before an ordinance can be passed making improvements, and improvements cannot be made before such ordinance is passed. 9, 366 (2 N. W., 724).

2841. The **overseer of streets** shall, subject to the orders of the mayor and council, have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the council may require.

2842. The **police judge** shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city, and jurisdiction concurrent with that which is or may be conferred upon justices of the peace, of misdemeanors under the laws of the state, arising within the limits of the city, and shall also have jurisdiction for the examination of offenders against the laws of the state, for offenses arising within the limits of the city.

2843. Whenever **complaint** shall be made to the police judge, on oath or affirmation of any person, that an offense has been committed, of which the police judge has jurisdiction, said judge shall forthwith issue a **warrant** for the arrest of the offender, which warrant shall be served by the sheriff, or a constable of the county, or any policeman of the city, or by some person specially appointed by writing, indorsed on the process by the police judge for that purpose, and whose return shall be made under oath.

Amended 1881, p. 169.

2844. All **fines** and penalties collected arising from a breach of ordinances of the city shall be paid to the city treasurer, and all fines and penalties collected arising from misdemeanors under the laws of the state shall be paid to the county treasurer.

2845. When any person shall be brought before the police judge upon such warrant, it shall be his duty to **hear and determine** the complaint alleged against the defendant.

2846. Upon good cause shown, the police judge may **postpone** the **trial** of a case to a certain day, in which case he shall require the defendant to enter into a **recognizance** with sufficient security, conditioned that he will appear before the said judge at the time and place appointed, then and there to answer the complaint alleged against him.

2847. In case of the **breach of** any **recognizance** entered into as aforesaid, the same shall be certified to the district court of the proper county, to be proceeded upon according to law; if in the progress of any trial before the said judge it shall appear that the accused ought to be put upon his trial for an **offense not cogniz-**

able before the said judge, he shall immediately stop all further proceedings before him, and proceed as in other cases exclusively cognizable before the district court.

2848. It shall be [the] duty of said judge to summon all persons whose testimony may be deemed material, as **witnesses** at the trial, and to enforce their attendance, by attachment if necessary, and all witnesses shall receive the sum of fifty cents for each day's attendance.

2849. Cases in the **police court** for violations of city ordinances shall be tried and determined by the police judge without the intervention of a **jury**; cases of misdemeanors under the statutes of the state shall be tried by the police judge alone, unless the defendant demand a jury, and if a jury be demanded, the case shall be tried by a jury of six competent men, unless a smaller number be agreed to by the defendant, to be selected in the manner provided by law for selecting jurors in justices' courts; and the trial of all cases before said police judge shall be conducted in all respects, not herein otherwise provided, in like manner as criminal cases before justices of the peace. Jurors in the police court shall receive the same fees as jurors in the justice's court, to be taxed as other costs are taxed in the case.

Amended 1881, p. 170.

2850. If the defendant be found guilty, the police judge shall declare and assess the punishment and render **judgment** accordingly. It shall be part of the judgment that the defendant stand committed until the judgment be complied with; **Provided*, That the defendant shall have the right to produce before said police judge one or more **sureties** to the satisfaction of said judge, which said sureties shall with the defendant confess a judgment for the amount of the fine or penalty imposed, and costs of suit, and said judge shall enter such confession or judgment upon his docket, and render judgment accordingly, in the name of the state of Nebraska, against them for the amount of such fine and costs; and if said judgment be not paid within ninety days from the date of such confession and entering of judgment, said police judge shall issue execution and collect the amount of said fine or penalty and costs in the manner provided by law for collecting judgments by execution [in] justice's court.

All after * added 1881, p. 170.

2851. Whenever the **defendant** is sentenced to **imprisonment** for the violation of a city ordinance, he shall be put to **work** for the benefit of the city, under direction of the mayor, for the term of his imprisonment; and when committed for the non-payment of a fine or costs, for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs $1.50 per day for each day he shall work. City not liable to police judge for fees where fines are worked out.

15, 88 (17 N. W. 365.)

2852. Any **defendant** committed under the provisions of this chapter for a misdemeanor arising under the laws of this state, may be **discharged** in the same manner as if he had been committed by the district court.

2853. In all **cases not** herein especially **provided for**, the process, **proceedings**, and trial before the judge shall be governed by laws regulating proceedings in justices' courts in criminal cases.

2854. When a **trial** shall be **continued** by a judge, it shall not be necessary to summons any witness who may be present at the continuance, but the judge shall verbally notify such **witnesses** as either party may require to attend before him to testify before him in the case on the day set for trial, which verbal notice shall be as valid as a summons.

2855. The **police judge** shall be a conservator of the peace, and his court shall be open every day, except Sunday, to hear, try, and determine all cases cognizable before him, and he shall have **power** to bring parties forthwith to trial.

2856. **Appeals** may be taken from the judgments of the police judge in the same manner as appeals are taken from the judgments of the justices of the peace in criminal cases.

2857. In case of a **vacancy** in the office of police judge by death, resignation, or otherwise, or in case of the absence, disability, or personal interest of said judge, such fact being shown by affidavit, the mayor shall, on notice thereof, appoint some justice of the peace holding and exercising the duties of his office within the corporate limits of such city, to act as police judge during such vacancy, absence, [or] disability of said police judge.

Amended 1881, p. 171.

2858. The **police judge** shall have **power** to enforce due obedience to all orders, rules, judgments, and decrees made by him, and may fine or imprison for contempt offered to such judge whilst holding his court, or to process issued by him, in the same manner and to the same extent as the district courts.

2859. Cities of the second class, in their corporate capacities, are authorized and empowered to enact **ordinances** for the following purposes, in addition to the other powers granted by this act:

I. To **restrain,** prohibit, and suppress billiard tables and bowling alleys kept for public uses, houses of prostitution, and unlicensed tippling shops, gambling and gambling houses, and other **disorderly houses** and practices, and all kinds of public indecencies, and all lotteries or fraudulent devices and practices for the purpose of obtaining money or property.

A change made in the organic law under which cities of the second class are organized, does not repeal existing ordinances, while the power to pass the same ordinances continues to exist. **10,** 539 (7 N. W., 287). Ordinance requiring saloons to close at 10 P. M. and remain closed until 5 A. M. is valid. **14,** 31 (14 N. W., 660).

II. To make regulations to **prevent** the introduction of **contagious diseases** into the city, to make quarantine laws for that purpose, and to enforce the same within five miles of the city.

III. To erect, establish, and regulate **hospitals,** and to provide for the government and support of the same.

IV. To make regulations to secure the general **health** of the city, and to prevent and remove nuisances, and to provide the city with **water.**

V. To establish a night watch and **police,** and to define the duties and powers of the same.

VI. To provide for and regulate the **lighting** of the streets and the erection of lamp posts.

VII. To purchase, hold, and own grounds for, and to erect and establish market houses and market places, and to regulate **markets** and market places.

VIII. To provide for the erection and government of any useful or necessary **buildings** for the use of the city.

IX. To prevent any desecration of the **Sabbath** day, commonly called Sunday, and to prohibit public amusements, shows, exhibitions, or ordinary business pursuits upon said day.

X. To **prevent** intoxication, fighting, quarreling, dog-fights, cock-fights, and all **disorderly conduct**.

XI. To prevent the use of any opera house, city hall, church, or other **building** resorted to by the people **for** worship, **amusement,** or for public assemblages, unless such opera house, city hall, church, or other building shall be provided with suitable, ample, and sufficient **fire escapes,** and suitable, ample, and sufficient means of exit and entrance.

XII. To **regulate,** license, tax, and suppress **places of amusement,** and to revoke the license therefor, when such places are not provided with sufficient and ample means of exit and entrance, and when the same are not safe for such uses, or when the licensee has been convicted of any violation of the ordinances in relation to such places, and to declare from time to time when such place or places are unsafe for such uses.

XIII. To prescribe the thickness, strength, and manner of **constructing** stone, brick, and other **buildings,** and to prescribe and direct the number and construction of means of exit and entrance and the construction of fire escapes.

XIV. To license, tax, and **regulate runners** for stages, cars, hotels, public buildings, or other things or persons.

XV. To license, tax, suppress, **regulate** and prohibit hawkers, **peddlers,** pawnbrokers, keepers of ordinaries, theatrical, and other **exhibitions,** shows, and other amusements, and to revoke such licenses at pleasure.

XVI. To forbid, punish, and prohibit the selling or giving away of any **intoxicating,** malt, vinous, mixed, or fermented **liquor** to any minor, apprentice, or insane, idiotic, or distracted person, habitual drunkard, or person in the habit of getting intoxicated.

XVII. To **prevent** the dangerous construction and condition of chimneys, fire-places, hearths, stoves, stove-pipes, ovens, boilers, apparatuses used in and about any building or manufactory, and to cause the same to be removed or placed in a safe condition as the council may prescribe, when by it considered dangerous. To regulate and prevent the carrying on of manufactories dangerous in causing and promoting **fires.** To prevent the deposit of ashes in unsafe places, and to cause all such buildings and inclosures as may be in a dangerous state to be put in a safe condition.

XVIII. [**Explosives.**]—To regulate and prevent storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitro-glycerine, petroleum, or any of the productions thereof and other material, and the use of lights in stables and shops and other places, and the building of bonfires; also to regulate, prohibit, and restrain the use of fire-works, fire-crackers, Roman candles, sky rockets, and other pyrotechnic displays.

XIX. To prohibit and punish **cruelty to animals.**

XX. To regulate **traffic** and sales **upon** the **streets,** sidewalks, and public places.

XXI. To regulate and prevent the **use of streets,** sidewalks, and public grounds for signs, sign posts, telegraph, or other poles, racks, posting of handbills and advertisements.

XXII. To regulate the **use of sidewalks** and all structures thereunder.

XXIII. To regulate and prevent the **moving** of **buildings** through or upon the streets, and to regulate and prohibit the piling of building material or any excavation or **obstruction of** the **streets.**

XXIV. To provide for and change the location, grade, and crossing of any **railroad.**

XXV. [**Same.**]—To require **railroad** companies to keep **flagmen** at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads. To compel any railroad to raise or lower their railroad **tracks** to conform to any grade which may at any time be established by such city or village, and where such tracks run lengthwise of any street, alley, or highway, to keep their railroad tracks on a level with the street surface and so that such tracks may be crossed at any place on such alley or highway. To compel and require railroad companies to make and keep open streets, and to keep in repair ditches, drains, sewers, and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the drainage of adjacent property or streets shall not be impeded.

XXVI. To construct and keep in repair culverts, drains, sewers, and cesspools, and to regulate the use thereof.

Gives the right to provide the means of carrying out provision of subdivision 26. 22, 620 35 N. W., 941).

XXVII. To issue bonds in place of, or to supply means to meet its maturing bonds, or for the consolidation or funding of the same.

XXVIII. To procure fire engines, hooks, ladders, buckets, and other apparatus, and organize fire engine, hook and ladder, and bucket companies, and to prescribe rules of duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations therefor.

XXIX. To elect one of their own body who shall be styled the "president of the council," and who shall preside at all meetings of the council in the absence of the mayor; and in the absence of the president to elect one of their own body to occupy his place temporarily, and who shall be styled "acting president of the council;" and the president and acting president, when occupying the place of the mayor, shall have the same privileges as other members of the council; and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

Amended 1881, p. 198.

2860. Section thirty-nine of "An act to provide for the organization, government, and powers of cities and villages," approved March 1st, 1879, be and the same is hereby repealed; *Provided*, That all ordinances passed heretofore and rights accrued thereunder, under the powers contained in said section, shall be and continue uninterruptedly in full force.

Amended 1881, p. 198.

VILLAGES.

2861. Any town or village containing not less than two hundred nor more than fifteen hundred inhabitants, now incorporated as a city, town, or village, under the laws of this state, or that shall hereafter become organized pursuant to the provisions of this act, and any city of the second class which shall have adopted village government as provided by law, shall be a village, and shall have the rights, powers, and immunities hereinafter granted, and none other, and shall be governed by the provisions of this subdivision; *Provided*, That the cities of the second class heretofore incorporated, and containing not more than fifteen hundred inhabitants, shall continue to be and exercise the powers of cities of the second class, and the officers thereof shall continue to exercise the powers conferred herein upon officers of such cities until the first general election held therein, and the qualifications of village officers elected at said election; **Provided further*, That whenever a majority of the taxable inhabitants of any town or village, not heretofore incorporated under any law of this state, shall present a petition to the county board of the county in which said petitioners reside, praying that they may be incorporated as a village, designating the name they wish to assume, and the metes and bounds of the proposed village; and if such county board or a majority of the members thereof shall be satisfied that a majority of the taxable inhabitants of the proposed village have signed such petition, and that inhabitants to the number of two hundred or more are actual residents of the territory described in the petition, the said board shall declare the said proposed village incorporated, entering the order of incorporation upon their records, and designating the metes and bounds thereof; and thereafter the said village shall be governed by the provisions of this act applicable to the government of villages. And the said county board shall, at the time of the incorporation of said village, appoint five persons having the qualifications provided in section forty-two of this act [2863], as trustees, who shall hold their offices and perform all the duties required of them by law, until the election and qualification of their successors at the time and in the manner provided in this act.

All after * added 1881, p. 202. Facts held sufficient to show that village was a *de facto* corporation during time in question. 24, 247 (38 N. W., 737). See 10, 205 (4 N. W., 965).

2862. The corporate powers and duties of every **village** shall be vested in the board of **trustees,** to consist of five members.

2863. Any person may be a **trustee** who shall have attained the age of twenty-one years, and **shall be** a male citizen of the United States, or declared his intention to become such, who shall have been an inhabitant and taxpayer of the village at the time of his election, and resided therein for three months next preceding; and every trustee so elected shall hold his office for the term of one year, and until a successor is elected and qualified.

2864. Every **trustee,** before entering upon the duties of his office, shall take an **oath** to support the constitution of the United States, and the constitution of the state of Nebraska, and faithfully and impartially to discharge the duties of his office; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman from their number. The board of trustees shall by ordinance fix the time and place of holding their stated meetings, and may be convened at any time by their chairman.

2865. At all **meetings** of the board a majority of the trustees shall constitute a quorum to do business; a smaller number may adjourn from day to day, and may compel the **attendance** of absent members in such manner and under such penalties as the board of trustees by ordinance may have previously prescribed.

2866. The board of trustees shall keep a **journal** of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on the journal, on any question or ordinance, and the proceedings shall be public.

2867. Such board of trustees shall have **power** to pass by-laws and ordinances to prevent and remove nuisances; to prevent, restrain, and suppress bawdy houses, gambling houses, and other disorderly houses within the limits of such village; to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other amusements within such village; to establish night watches; to provide pest houses; to prevent the introduction and spread of contagious diseases. to establish and regulate markets; to erect and repair bridges; to erect, repair, and regulate wharves, and the rates of wharfage; to regulate the landing of steamboats, rafts, and other water craft; to provide for the inspection of lumber, building materials, and provisions to be used or offered for sale in such village, or to be exported therefrom; to require and regulate the planting and protection of shade trees in the streets, and the building of stairways, railways, doorways, awnings, hitching posts, and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks of such village; and in addition to the special powers herein conferred and granted, maintaining the peace, good government, and welfare of the town or village, and its trade, commerce, and manufactories, and to enforce all ordinances by inflicting penalties upon inhabitants, or other persons, for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable, with costs, together with judgment of imprisonment until the amount of said judgment and costs shall be paid.

Village subject to same liabilities as other municipalities for defective sidewalks. **27**, 773 (43 N. W., 1145); **28**, 831 (40 N. W., 417). Village cannot enforce occupation tax by imprisonment. **27**, 67 (42 N. W., 913).

2868. Such village **board** of trustees may **appoint** a village clerk, treasurer, attorney, *overseer of the streets, and marshal, who shall hold their offices for one year, unless sooner removed by the president of the board, with the advice and consent of the trustees.

All after * added 1885, p. 158.

2869. The trustees shall receive no **compensation.** The compensation of the other officers shall be fixed by ordinance, but not to exceed the following sums, respectively, in one year: The clerk one hundred and fifty (150) dollars per year. The treasurer one hundred and fifty (150) dollars per year. The attorney one hundred and fifty (150) dollars per year. *The marshal twenty-five (25) dollars per month, and not to exceed three hundred (300) dollars per year. The overseer of the streets shall receive two (2) dollars per day, for services actually rendered, and shall not receive to exceed three hundred (300) dollars per year.

All after * added 1885, p. 159.

2870. The chairman of such board of trustees shall cause to be printed and **published** the **by-laws** and **ordinances** of the board, for the information of the inhabitants, and cause the same to be carried into effect, and in case of the absence of the chairman of the board from any meeting of the board of trustees, such board shall have power to appoint a **chairman** *pro tempore*, who shall, for the time being, exercise and have the powers, and perform the same duty, as the regular chairman.

2871. The board of trustees shall give public **notice of** the time and place of holding each **election;** said notice to be given not less than ten nor more than twenty days previous to the election.

2872. If, on any day appointed for holding any election under the provisions of this chapter, any of the judges or clerks of election shall fail to attend, the electors present may fill such **vacancies** from among the qualified electors present.

2873. In counties not under township organization **justices** of the peace of any precinct in which any village or any part thereof may be situated, and in counties under township organization justices of the peace elected in said village, or from the township in which any village or any part thereof may be situated, shall have **jurisdiction** to hear, try, and determine all offenses against the general ordinances of such village, and for that purpose may issue warrants for the arrest of any alleged offender, upon information under oath as in other cases; and upon the arrest of the defendant by the sheriff or any constable of the county, or marshal of such village, shall proceed thereon in all respects in the same manner and with the same powers as against persons charged with a misdemeanor under the general laws of the state; and the justice by or before whom such proceedings shall be had, and the officer making such arrest, shall be entitled to the same **fees** and costs, and be collected in the same manner as in cases of prosecutions for misdemeanors under the laws of the state.

Amended 1885, p. 159.

ADOPTION OF VILLAGE GOVERNMENT.

2874. Whenever any **city** of the second class, containing more than fifteen hundred inhabitants, desires to **discontinue** its organization as a city, and **organize as a village,** and one-fourth of the legal voters of such city shall petition the city council, the council shall cause to be published, for at least thirty days, a notice stating that the question of adopting village government will be submitted at the next annual city election. The form of the ballot shall be "For organization as a village," and "Against organization as a village;" and at the same election the qualified voters shall also vote for five trustees for the village. If a majority of the votes cast are "For organization as a village," then such city shall within sixty days after such election be and become a village, and be governed under the provisions of the law relating to villages, unless it shall at some future annual election adopt a city government, in the manner provided herein for its adoption of village government.

2875. If village government shall have been adopted as aforesaid, the board of trustees shall, at the expiration of sixty days from said election, enter upon the duties of their offices, and all books, papers, records, moneys, and **property** of such city shall be **delivered** over **to** the board of **trustees,** and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

2876. All **ordinances** of the city shall remain and be in full force in the village until amended or repealed by the board of trustees, and the board shall provide for the payment of the city **indebtedness** and levy necessary taxes therefor as if the same had been incurred by the village.

GENERAL PROVISIONS.

2877. Cities of the second class and villages governed by this chapter shall be **bodies corporate** and politic, and may **sue** and be sued; **contract** or be contracted with; acquire, hold, and convey property real or personal; have a common seal which they may change and alter at pleasure; and such other powers as may be conferred by law; *Provided,* That real property shall only be conveyed by the proper authorities of such city or village when so authorized by a vote of the electors thereof.

2878. The **corporate name** of each city or village governed by this chapter shall be the "city (or village) of ———," and all and every process and notice whatever affecting such corporation shall be served upon the mayor or chairman of board of trustees, and in his absence, upon the clerk, or in the absence of such officers, then by leaving a certified copy at the office of the clerk.

2879. All **rights** and privileges which have accrued to any city, town, or village held by any officer of such corporation, under or by virtue of any act of the legislature of the territory or state of Nebraska, or any act of the congress of the United States, before the taking effect of this chapter, are hereby preserved to such cities, towns, or villages, and all of its said trusts, rights, and privileges shall be transmitted to and be **vested** in such latter corporation, and all actions heretofore commenced by or against any city or town which shall be or become a city or village under the provisions of this chapter shall be in no manner affected by this act, but all such actions shall be continued to final judgment and satisfaction as if this chapter had not been passed.

2880. The style of all **ordinances** shall be: "Be it ordained by the mayor and council of the city of ———" or "the chairman and board of trustees of the village of ———." And all ordinances of a general nature shall, before they **take effect,** be published within one month after they are passed, in some newspaper **published** in said city or village, but if no paper be published in said city or village, then by posting up, one in each of three public places in said city or village, a written or printed copy thereof, or by publishing the same in book or pamphlet form; *Provided, however,* That in case of riot, infectious or contagious diseases, or other impending danger requiring its immediate operation, such ordinance shall take effect upon the proclamation of the mayor or chairman of the board of trustees, posted in at least three of the most public places in the city or village. *The passage, approval, and publication or posting of said ordinances shall be sufficiently proved by a certificate under seal of the city or village from the clerk thereof, showing that such ordinance was passed and approved, and when and in what paper the same was published, or when and by whom and where the same was posted up. And when ordinances are printed in book or pamphlet form, purporting to be published by authority of the board of trustees or city council, the same need not [be] otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof.

Amended and all after * added 1881, p. 172.

2881. On the first Tuesday of April of each year, an **election** shall be held in each city and village governed by this chapter, for officers as in this chapter provided, all of which officers (except councilmen) shall be elected and hold their respective offices for the term of one year, and until their successors are elected and qualified; at which election the qualified voters of each city may cast their ballots between the hours of nine o'clock A. M. and seven o'clock P. M.

See **10,** 206 (4 N. W., 965.)

2882. All **qualified electors** of this state, who shall have resided within the limits of any city of the second class or village for three months preceding any election therein, shall be entitled to vote at all city and village elections.

2883. **Certificates of election** for all officers of cities and villages shall be made out under the corporate seal by the city council or board of trustees, at their first meeting after any election of such officers.

2884. The city or village **clerk** shall have the custody of all laws and ordinances, and shall keep a correct journal of the proceedings of the council or board of trustees; he shall also keep a record of all outstanding bonds against the city or village, showing the number and amount of each, for and to whom the said bonds were issued, and when any bonds are purchased or paid or canceled, said record shall show the fact, and in his annual report he shall describe particularly the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof; he shall also perform such other **duties** as may be required by the ordinances of the city.

2885. The **treasurer** of each city and village shall be the custodian of all money belonging to the corporation; he shall keep a separate account of each fund or appropriation, and the debts and credits belonging thereto; he shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and on what account paid; he shall also file copies of such receipts with his monthly reports; he shall, at the end of each and every month, and as often as may be required, render an account to the city council or board of trustees, under oath, showing the state of the treasury at the date of such account, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him; which said warrants, with any and all vouchers held by him, shall be filed with his said account in the clerk's office; and if said treasurer neglect or fail, for the space of ten days from the end of each and every month, to render his said account, his office shall be declared vacant, and the city council or board of trustees shall fill the vacancy by appointment until the next election for city or village officers.

2886. The **treasurer** may be required to keep all **money** in his hands belonging to the corporation, in such place or places of **deposit** as may be provided by ordinances, but no such ordinance shall be passed by which the custody of such money shall be taken from the treasurer, and deposited elsewhere than in some regularly organized bank, nor without a bond to be taken from such bank, in such penal sum and with such security as the council or board of trustees shall direct and approve, sufficient to save the corporation from any loss; but such penal sum shall not be less than the estimated receipts for the current year from taxes and special assessments levied and to be levied by the corporation.

2887. All **warrants** drawn on the treasurer must be signed by the mayor or chairman and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable, and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn, and the amount already expended of such fund.

2888. The city or village **attorney** shall be the legal adviser of the council or board of trustees. He shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted, or defended on behalf of the corporation, or that may be ordered by the council or board of trustees; and when requested, shall attend meetings of the council or board and give them his opinion upon any matter submitted to him, either orally or in writing, as may be required.

The following two sections were added to the act, 1885, p. 158:

2889. The **marshal** shall be chief of police, and shall at all times have **power** to make, or order, an arrest with proper process, for any offense against the laws of the state or ordinances of the village, and bring the offender for trial before the proper officer of the village, and to arrest without process in all cases where any such offense shall be committed or attempted to be committed in his presence.

2890. The **overseer of streets** shall, subject to the order of the board of such village, have general charge, direction, and control of all work on streets, sidewalks, culverts, and bridges of the village, and shall perform such other duties as the board may direct.

2891. **No officer** of any city or village shall be **interested,** directly or indirectly, **in** any **contract** to which the corporation, or any one for its benefit, is a party; and any such interest in any such contract shall avoid the obligation thereof on the part of such corporation, **nor** shall any officer receive any **pay** or perquisites **from** the city other than his salary, as fixed by ordinance and this chapter; and neither the city council nor board of trustees shall pay or appropriate any money or other valuable thing to any person not an officer **for** the performance of any act, **service,** or duty, the doing or performance of which shall come **within** the proper **scope of** the **duties** of any officer of such corporation.

2892. In **addition to** the **powers** hereinbefore granted cities and villages under the provisions of this chapter, each city and village may enact ordinances or by-laws for the following purposes:

I. To levy **taxes** for general revenue purposes, not to exceed ten mills on the dollar in any one year, on all the property within the limits of said cities and villages taxable according to the laws of the state of Nebraska, the valuation of such property to be ascertained from the books or assessment rolls of the assessors of the proper precinct or township.

II. To levy any other tax or **special assessment** authorized by law.

III. To provide for the **grading** and repairs of any **street,** avenue, or alley, and the construction of bridges, culverts, and sewers, and shall defray expenses of the same out of the general funds of such city or village, not exceeding two mills of the levy for general purposes, but no street shall be graded except the same be ordered to be done by the affirmative vote of two-thirds of the city council or trustees.

IV. To **construct sidewalks,** to curb, **pave,** gravel, macadamize, and gutter any highway or alley therein, and to levy a special tax on the lots and parcels of land fronting on such highway or alley, to pay the expenses of such improvement. But unless a majority of the resident owners of the property, subject to the assessment of such improvement, petition the council or trustees to make the same, such improvement shall not be made until three-fourths of all the members of such council or trustees shall by vote assent to the making of the same.

V. To **repair sidewalks,** and to assess the expense thereof on the property in front of which such repairs are made.

VI. To provide for the laying of **temporary** plank **sidewalks,** upon the natural surface of the ground, without regard to grade, on streets not permanently improved, at a cost not exceeding fifty cents a lineal foot, and to provide for the assessment of the cost thereof on the property in front of which the same shall be levied.

VII. **Assessments** made under the provisions of the last three preceding subdivisions of this section shall be made and assessed in the following manner: *First*—Such assessment shall be made by the council or board of trustees at a special meeting, by a resolution fixing the valuation of such lot assessed, taking into account the benefits derived or injuries sustained in consequence of such contemplated improvements, and the amounts charged against the same, which with the vote thereon by yeas and nays shall be spread at length upon the minutes. Notice of the time of holding such meeting, and the purpose for which it is to be held, shall be published in some newspaper published or of general circulation in said city or village, at least four weeks before the same shall be held, or in lieu thereof, personal service may be had upon persons owning or occupying property to be assessed. *Second*—All such assessments shall be known as "special assessments for improvements," and shall be levied and collected as a special tax, in addition to the taxes for general revenue purposes, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other city or village taxes.

Sidewalk tax does not differ from one for general revenue in the method of its enforcement and collection will not be enjoined. **27,** 340–1 (43 N. W., 257).

VIII. To raise revenue by levying and collecting a license **tax on** any occupation or **business** within the limits of the city or village, and regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed; *Provided, however,* That all scientific and literary lectures and **entertainments** shall be **exempt** from such taxation, as well also as concerts and other musical entertainments given exclusively by the citizens of the city or village.

This provision valid as to insurance business. **25,** 867 (41 N. W., 140).

IX. To license, **regulate,** and prohibit the **selling** or giving away **of** any intoxicating, malt, vinous, mixed, or fremented **liquor,** the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license; *Provided,* That the city council or board of trustees may grant permits to druggists for the sale of liquors for medicinal, mechanical, sacramental, and chemical purposes only, subject to forfeiture, and under such restrictions and regulations as may be provided by ordinance; *Provided further*, That in granting licenses such corporate authorities shall comply with whatever general law of the state may be in force relative to the granting of licenses.

X. To impose a license **tax** of not less than three nor more than ten dollars **upon** the owners and harborers of **dogs**, and enforce the same by appropriate penalties, and to authorize the destruction of any dog, the owner or harborer of which shall refuse or neglect to pay such license tax; *Provided*, That no such license shall authorize the keeping, owning, or harboring of more than one dog.

XI. To appoint **judges and clerks of** all **elections**, and prescribing the manner of conducting the same, and the return thereof, and for holding special elections for any purpose provided by law.

XII. To make all such **ordinances**, by-laws, rules, regulations, not inconsistent with the laws of the state, as may be expedient, in addition to the special powers in this chapter granted, maintaining the peace, good government, and welfare of the corporation, and its trade, commerce, and manufactories, and to **enforce** all ordinances by inflicting fines or penalities for breach thereof not exceeding one hundred dollars for any one offense, recoverable with costs, and in default of payment to provide for confinement in prison or jail, and at hard labor upon the streets or elsewhere, for the benefit of the city or village.

XIII. To regulate and prescribe the powers, and duties, and compensation of **officers** not herein provided for, and to require from all officers and servants, elected or appointed, bond and security for the faithful performance of their duty.

XIV. To make contracts with and authorize any person, company, or association to erect **gas**-works, and give such persons, company, or associations the exclusive privilege of furnishing gas to light the streets, lanes, and alleys for any length of time, not exceeding twenty-one years.

XV. 1. To establish, alter, and change the channels of **water-courses**, and to wall them and cover them over; to establish, make, and regulate wells, cisterns, windmills, aqueducts, and reservoirs of water, and to provide for filling the same. 2. To make contracts with and authorize any person, company, or corporation to erect and maintain a system of **water-works** and water supply, and to give such contractors the exclusive privilege for a term not exceeding twenty-five years, to lay down in the streets and alleys of said city water mains and supply pipes, and to furnish water to such city or village, and the residents thereof, and under such regulations as to price, supply, rent of water-meters, as the council or board of trustees may from time to time prescribe by ordinance for the protection of the city, village, or people. The right to supervise and control such corporation, as above provided, shall not be waived or set aside. 3. To provide for the purchase of steam engines, and for a supply of water for the purpose of **fire protection** and public use, and for the use of the inhabitants of such cities and villages by the purchase, erection, or construction of a system of water-works, and by maintaining the same; *Provided*, That all contracts for the erection or construction of any such work, or any part thereof, shall be let to the lowest responsible bidder therefor, upon not less than twenty days' public notice of the terms and conditions upon which the contract is to be let, having been given by publication in a newspaper published in said city or village, and if no newspaper is published therein, then in some newspaper published in the county; *Provided further*, That no member of the city council, or board of trustees, or mayor, shall be directly or indirectly interested in such contract; and in all cases the council or board of trustees, as the case may be, shall have the right to reject any and all bids that may not be satisfactory to them. Such cities or villages may borrow money or issue bonds for the purpose, and levy and collect a general tax in the same manner as other municipal taxes may be levied and collected for the purchase of steam engines, and for the purchase, erection, or construction, and maintenance of such water-works, or to pay for water furnished such city or village under contract, to an amount not exceeding 7 mills on the dollar in any one year on all the property within such city or village as shown and valued upon the assessment rolls of the assessor of the proper precinct or township, in addition to the sum authorized to be levied under subdivision one of this section, and all taxes raised under this clause shall be retained in a fund known as "Water Fund"; *Provided further,* That no such money shall be borrowed or bonds issued, unless the same shall have been authorized by a vote of the majority of the electors of such city or village [thereon at an election submitting the proposition to the electors of such city or village] to that effect. The bonds shall be bonds of the city, called "**Water Bonds,**" to become due in twenty years from the date of issue, but payable any time after five years, drawing seven per cent interest per annum, payable annually, and bonds shall not be issued under the provisions hereof to a greater amount than one hundred thousand dollars ($100,000). For the purpose of erecting, constructing, locating, maintaining, or supplying such water-works, any such city or village may go beyond its territorial limits, and may take, hold, and acquire rights, property, and real estate, by purchase or otherwise, and may, for this purpose, take, hold, and condemn any and all necessary property and real estate in the manner provided for taking and **condemning** of private **property** for public use, and the jurisdiction of such city or village to prevent any pollution or injury to the stream or source of water for the supply of such water-works shall extend fifteen miles bepond its corporate limits; and the council or board of trustees of such towns and villages shall have power to make and enforce all needful rules and regulations in the erection, construction, use, and management of such water-works, and for the use of the water therefrom, and such cities or villages shall have the right and power to tax, assess, and collect from the inhabitants thereof such tax, rent, or rates, for the use and benefit of water used or supplied to them by such water-works as the common council or board of trustees shall deem just or expedient, and all such water rates, taxes, or rents shall be a lien upon the premises, or real estate, upon or for which the same is used or supplied; and such taxes, rents, or rates shall be paid and collected, and such lien enforced in such manner as the common council shall by ordinance direct and provide. The expense of locating, erecting, and constructing reservoirs and hydrants for the purpose of fire protection, and the expense of constructing and laying water main pipes, or such parts thereof as may be just and lawful, may be assessed upon and collected from the property and real estate especially benefited thereby, if any, in such manner as may be provided for the making of **special assessments** for other public improvements, in such cities, towns, and villages. All income received by such cities or villages from such water-works, from the payment and collection of water taxes, rents, or rates, or assessments, shall be kept in a separate fund, and shall first be applied in the payment of running expenses and interest on bonds or money borrowed and used in the erection and construction of such water-works; and should there be any surplus it shall be annually created into a sinking fund for the payment of water bonds or for the improvement of the works, as the common council or board of trustees may direct. As soon as a system of water-works shall have been established by any city or village under the provisons of this section, the mayor of such city, or the president of the board of trustees of such village, shall nominate, and by and with the advice and consent of the city council or board of trustees, as the case may be, shall appoint a resident freeholder, who shall be known as the **water commissioner** of such city or village, and whose term of office shall be for one fiscal year, or until his successor shall be appointed and qualified, and annually on the first day of May said water commissioner shall be appointed as aforesaid, but said water commissioner may at any time, for sufficient cause, be removed by a two-thirds vote of said city council or board of trustees; and any vacancy occurring in said office of water commissioner by death, resignation, or removal from office as aforesaid, or removal from the city or village, may be filled in the manner hereinbefore provided for the appointment of such commissioner. Said water commissioner shall, before he enters upon the discharge of his duties, execute a bond to such city or village in a sum to be fixed by the mayor and council, or president and board of trustees, but not less than five thousand dollars ($5,000), conditioned for the faithful discharge of his duties, and signed by two or more good and sufficient sureties, to be approved by the mayor and council or board of trustees. It shall be the duty of such water commissioner, subject to the supervision of the mayor and council or board of trustees, to have the general management and control of the system of water-works in the city or village, fixing the rates to be paid by the inhabitants thereof, within such limits as may be prescribed by ordinance for the use of water, water meters, and hydrants; to collect all moneys receivable by the city or village on account of said system of water-works, and to faithfully account for and to pay the same over to the treasurer of said city or village, taking his receipt therefor in duplicate, filing one of the same with the city or village clerk; to make a detailed report to the city council or board of trustees at least once every six months of the condition of said water system, of all the mains, pipes, hydrants, reservoirs, and machinery, such improvements, repairs, and extensions thereof as he may think proper, and showing the amount of receipts and expenditures on account thereof for the preceding six months, and no moneys shall be expended for improvement, repair, or extension of said water-works system, except upon recommendation of said water commissioner. Said water commissioner shall perform such other duties as may be prescribed by ordinance. Said water commmissioner shall be paid a salary to be fixed by ordinance, not exceeding four hundred dollars ($400) per annum, and upon his written recommendation the council or board of trustees shall employ such laborers and clerks as may to them seem necessary, and no member of the council or board of trustees shall be eligible to the office of water commissioner during the time for which he was elected.

Assessed valuation at date of adoption, not of submission of bond proposition, determines amount which may be voted. **24**, 642 (40 N. W., 316).

XVI. To regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs, and other **animals**, and to cause such as may be running **at large** to be **impounded** and sold to discharge the costs and penalities provided for the violation of such prohibitions, and the expense of impounding and keeping the same, and of such sale.

XVII. To provide for the erection of all needful pens and **pounds** within or without the city limits, and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

XVIII. To regulate the construction of, and order the suppression and cleaning of **fire-places**, chimneys, stoves, stove-pipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business which may be dangerous in causing or promoting fires, and to prescribe the limits within which no dangerous or obnoxious and offensive business shall be carried on.

XIX. **Fire limits.**—To prescribe and alter limits within which no buildings shall be constructed except of brick, stone, or other incombustible material, with fire-proof roof, and after such limits are established, no special permits shall be given for the erection of buildings of combustible material within said limits.

XX. To regulate levees, depots, **depot grounds,** and places for storing freights and goods, and to provide for and regulate the passage of **railways** through **streets** and public grounds of the city or village.

XXI. To regulate the crossing of railway tracks, and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, **cars,** or trucks within the limits of said city, or village, and to prescribe rules relating thereto, and to govern the **speed** thereof, and to make any other and further provisions, rules, and restrictions to prevent accidents at **crossings** and on the tracks of railways, and to prevent fires from engines.

XXII. To establish standard **weights and measures** and to regulate the weights and measures to be used in the city or village, and to regulate the weighing and measuring of every commodity sold in the city or village, in all cases not otherwise provided by law.

XXIII. To provide for the **inspection** and weighing **of hay, grain,** and **coal,** the measuring of wood and fuel to be used in the city or village, and to determine the place or places of the same, and to regulate and prescribe the place or places of exposing for **sale** hay, coal, and wood; to fix the fees and duties of persons authorized to perform the duties named in this subdivision.

XXIV. To remove all **obstructions** from the sidewalks, curbstones, gutters, and cross-walks at the expense of the persons placing them there, or of the city or village, and to require and regulate the planting and protection of shade **trees** in the streets, the building of bulk-heads, cellars, and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other **structures** projecting upon or over and adjoining, and all other excavations through and under the sidewalks in the said city or village.

XXV. To prevent and restrain riots, routs, noises, disturbances, or **disorderly assemblages;** to regulate, punish, and prevent the discharge of fire-arms, rockets, powder, fire-works, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent and punish the carrying of concealed weapons; to arrest, regulate, punish, fine, or set at work on the streets, or elsewhere, all **vagrants** and persons found without means of support or some legitimate business.

XXVI. To **prevent** and remove all **encroachments** into and **upon** all sidewalks, **streets,** avenues, alleys, and other city or village property, and to punish and prevent all horse-racing, fast driving, or riding in the streets, highways, alleys, bridges, or places in the city or village, and all games, practices, or amusements therein likely to result in damage to any person or property; to regulate, prevent, or punish the riding, driving, or passing of horses, mules, oxen, cattle, or other teams, or any vehicle drawn thereby, over, upon, or across sidewalks, or along any street of the city or village.

XXVII. To **open,** widen, or otherwise improve or vacate any **street,** avenue, alley, or lane within the limit of the city or village; also to create, open and improve any new street, avenue, alley, or lane; *Provided,* That all damages sustained by the citizens of the city or village, or of the owners of the property therein, shall be ascertained in such manner as shall be provided by ordinance; *Provided further,* That whenever any avenue, street, alley, or lane shall be vacated, the same shall revert to the owners of the adjacent real estate, one-half on each side thereof.

XXVIII. To **open,** create, widen, or extend any street, avenue, alley, or lane, or annul, vacate, or discontinue the same whenever deemed expedient for the public good, and to take private property for public use, or for the purpose of giving a

right of way or other privilege to any railroad company, or for the purpose of erecting or establishing market places, or for any other necessary public purpose; *Provided, however,* That in all cases the city or village shall make the person or persons, whose property shall be taken or injured thereby, adequate compensation therefor, to be determined by the assessment of five disinterested householders, who shall be elected and compensated as may be prescribed by ordinance, and who shall in the discharge of their duties act under oath faithfully and impartially to make the assessment to them submitted.

XXIX. To **borrow money** on the credit of the city, and to pledge the credit, revenue, and public property of the city for the payment thereof, when authorized in the manner hereinafter provided.

XXX. All **ordinances** shall be **passed** pursuant to such rules and regulations as the council or board of trustees may provide; and all such ordinances may be **proved** by the certificate of the clerk, under the seal of the city or village, and when printed or **published** in book or pamphlet form, and purported to be published by authority of the city or village, shall be read and received in evidence in all courts and places without further proof.

XXXI. The council or trustees shall cause to be published semi-annually a **statement** of the receipts of the corporation and sources thereof, and an itemized account of expenditures, with a statement **of** the **financial condition** of the city or village.

XXXII. To purchase, hold, and pay for, in the manner herein provided, **lands** not exceeding eighty acres in one body outside of the limits, **for** the purpose of the **burial** of the dead, and all necessary grounds for **hospital** grounds and **water-works.**

XXXIII. To survey, plat, map, grade, fence, ornament, and otherwise **improve** all burial and **cemetery** grounds and avenues leading thereto, owned by such city or village; to construct walks, to protect ornamental trees therein, and provide for paying the expenses thereof.

XXXIV. To **convey cemetery lots** by certificate signed by the mayor and chairman, and countersigned by the clerk, under the seal of the city, or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by numbers as laid down on such map or plat, for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs and assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the city council or board of trustees, and such certificate shall be entitled to be recorded in the office of the county clerk of the proper county without further acknowledgment, and such description of lots shall be deemed and recognized as a sufficient description thereof.

XXXV. To limit the number of **cemetery lots** which shall be owned by the same person at the same time; to prescribe **rules** for enclosing, adorning, and erecting monuments and tombstones on cemetery lots; to prohibit any diversion of the use of such lots, and any improper adornment thereof; but no religious test shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots.

XXXVI. To pass **rules** and ordinances imposing penalties and fines not exceeding one hundred dollars, **regulating,** protecting, and governing the **cemetery,** the owners of lots therein, visitors thereof, and trespassers therein. And the officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the corporation itself.

Amended 1887, p. 291.

2893. Each city and village governed by this chapter is hereby empowered to provide that every male inhabitant of the corporation between the ages of twenty-one and fifty years shall, between the first day of April and the first day of November of each year, either by themselves or satisfactory substitutes, perform two days' **labor upon** the **streets,** alleys, or highways within such corporation at such times and places as the proper officers may direct and upon three days' notice in writing being given; *Provided,* That all persons so notified may commute the labor so required by the payment of three dollars to the proper officers of such city or village as may be provided by ordinance, and the funds arising under this section shall be expended by the city or village authorities in the repair and maintenance of the streets, alleys, and highways in said city or village. They may further provide that for each day's failure to attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding one dollar for each day's delinquency. The amount so due for labor tax to the amount of three dollars upon failure to labor or commute as above required shall be treated and collected as taxes on property, and the same shall be a lien on all the property of such person that may be listed and assessed for taxation for that year, and the council or trustees of such city or village shall at the time provided by law cause to be certified to the county clerk the amount due from each individual as aforesaid, and the said clerk shall place the same on the proper tax lists, to be collected in the manner provided by law for the collection of state and county taxes in the county where such city or village is situated, and the certificate of the city or village clerk that the person named therein has performed the labor or commuted as herein required shall be received by the county treasurer in discharge of the amount due from such persons. All moneys collected by the county treasurer under this section shall be paid over to the treasurer of the city or village wherein the same was levied and assessed.

Amended 1881, p. 187; 1883, p. 115; 1885, p. 179.

2894. Each city and village governed by this chapter shall have power to cause any **lot** of land within its limits on which water at any time becomes stagnant, to be filled up or **drained** in such manner as may be directed by a resolution of the council or trustees; and such owner or his agent shall, after service of a copy of such resolutions, or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, comply with the directions of such resolution within the time therein specified, and in case of failure or refusal to do so, it may be done by said corporation; and the amount of money so expended shall be assessed against such property, and the amount thereof collected as other special assessments.

2895. **Fines** may in all cases, and in addition to any other mode provided, be **recovered** by suit or action before a justice of the peace, or other court of competent jurisdiction, in the name of the state. And in any such suit or action where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be the facts of the alleged violation.

2896. Any city or village shall have the right to **use** the **jail of** the **county** for the confinement of such persons as may be liable to imprisonment under the ordinances of such city or village, but it shall be liable to the county for the cost of keeping such prisoners.

2897. All **suits for** the recovery of any **fine,** and prosecutions for the commission of any offense, made punishable as herein provided, shall be **barred** in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

2898. The **emoluments of no officer** whose election or appointment is required by this chapter shall be **increased** or diminished during the term for which he shall have been elected or appointed; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time the emoluments had been increased.

When salaries not fixed at the time of the election an ordinance passed afterwards fixing them within the limit prescribed, held good. **20**, 160 (29 N. W., 291).

2899. On the **passage** or adoption **of** every by-law or **ordinance,** and every resolution or order to enter into a contract by the council or board of trustees, the yeas and nays shall be called and recorded; and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council or trustees shall be required. All **appointments** of the officers by any council or trustees shall be made *viva voce,* and the concurrence of a like majority shall be required, and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded.

The vote of half the members of the council is not sufficient and the vote of the mayor adds nothing. **23**, 369 (36 N. W., 577).

2900. The city council or board of trustees shall have the care, supervision, and control of all public **highways,** bridges, streets, alleys, public squares, and commons within the city or village, and shall cause the same to be kept open and in repair, and free from nuisances. The cities shall have power by ordinance to sell and convey all **public squares,** streets, and alleys within the cities or villages; *Provided,* A petition containing the signature of three-fourths of the property holders of said city be presented to the city council, and that said petition be published not less than four weeks in each paper published in said city, and that any person aggrieved by said **sale** shall state cause why said property should not be sold, to the district court of said county wherein said city is situated, and if the said court shall decide that said party or parties have shown good and sufficient cause why said public property should not be so disposed of, then said public property shall not be sold. The proceeds of such property shall not be used for any other purpose except to pay any indebtedness against such city or for public improvement in said city. All public **bridges** exceeding sixty feet in length, over any stream crossing a state or county highway shall be constructed and kept in repair by the county; *Provided,* That when any city or village has constructed a bridge over sixty feet span, on any county or state highway within their corporate limits, and have incurred a debt for the same, then the treasurer of the county in which said bridge is located shall pay to the treasurer of said city or village seventy-five per cent of all bridge taxes collected in said city or village until said debt is fully paid and interest upon the same; *Provided further,* That the council or trustees may appropriate, in the manner hereinafter provided, a sum not exceeding five dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city or village on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city or village is located, from another state; and that no street or alley which shall hereafter be dedicated to public use by the proprietor of grounds in any city or village shall be deemed a public street or alley, or to be under the use or control of the city council or board of trustees, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

This does not prevent the issuing of bonds to build a bridge beyond the corporate limits. **23**, 179 (36 N. W., 474). Question of whether city is negligent in permitting obstructions upon the sidewalk for jury to determine. **20**, 289 (27 N. W., 920).

2901. No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner bringing produce or provisions to any of the **markets** in the city or village, or standing in or occupying a place in any of the market spaces of the city or village, or in the streets contiguous thereto, on market days and evenings previous thereto; but the city council or board of trustees shall have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, to prescribe the kind and description of articles which may be sold, and the stand or places to be occupied by the vendors, and may authorize the immediate seizure and arrest, or removal from the markets, of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

2902. All **ordinances** and resolutions, or orders for the appropriation or payment of money, shall require for their **passage** or adoption the concurrence of a majority of all members elected to the council or board of trustees; ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council or trustees shall dispense with the rule; ordinances shall contain no subject which shall not be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.

2903. All **claims** against the city or village must be presented to the council or trustees in writing, with a full account of the items, verified by the oath of [the] claimant, or his agent, that the same is correct, reasonable, and just, and no claim or demand shall be audited or allowed unless presented and verified as provided for in this chapter; and no costs shall be recovered against such city or village in any action brought against it for any unliquidated claim which has not been presented to the city council or board of trustees to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed, with the interest due.

This does not include claims arising out of a tort. **16,** 86 (20 N. W., 109). Not necessary to present claim to council to maintain action, but it is necessary to do so in order to recover costs. **11,** 255 (9 N. W., 55).

2904. Upon the allowance of **claims** by the council or trustees, the order for their **payment** shall specify the particular fund or appropriation out of which they are payable as specified in the annual appropriation bill to be passed in the manner hereinafter provided; and no order or warrant shall be drawn in excess of 85 per centum of the current levy for the purpose for which it is drawn, unless there shall be sufficient money in the treasury at the credit of the proper fund for its payment; and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn.

2905. [**Taxation.**]—The council or trustees of each city or village shall, at the time provided by law, cause to be certified to the county clerk the percentage or number of mills on the dollar of tax levied for all city or village purposes by them on the taxable property within said corporation for the year then ensuing, as shown by the assessment roll for said year, including all special assessments and taxes assessed as hereinbefore provided, and the said clerk shall place the same on the proper tax lists, to be collected in the manner provided by law for the collection of state and county taxes in the county where such city or village is situated; and in all sales for any delinquent taxes for municipal purposes, if there be other delinquent taxes due from the same person, or lien on the same property, the sale shall be for all the delinquent taxes; and such sales, and all sales made under or by virtue of this section or the provisions of law herein referred to, shall be of the same validity, and, in all respects, be deemed and treated as though such sales had been made for the delinquent state and county taxes exclusively. The amount which may be so certified, assessed, and collected shall not exceed ten mills on the dollar to defray its general and incidental expenses, together with any special assessments or special taxes, or amounts assessed as taxes under the provisions of this chapter, and such sum as may be authorized by law to be levied for the payment of outstanding bonds and debts.

2906. All **delinquent taxes** of any city or village, delinquent at the time of the adoption of this chapter, shall be certified, together with the tax lists, to the county treasurer, and to be collected in the same manner as delinquent state and county taxes; and all sales of property for such delinquent municipal taxes shall be as valid, and, in all respects, be deemed and treated as though such sales had been made for delinquent state and county taxes.

2907. The treasurer of the **county** shall **pay over** on demand to the treasurer of any city or village all money received by him arising from **taxes** levied **belonging to** such **city** or village, together with all money collected as a tax on dogs from residents of such corporation, for the use of the general fund therein.

2908. The **fiscal year** of each city and village shall commence on the first Tuesday of May.

2909. The city council of cities and board of trustees in villages shall, within the first quarter of each fiscal year, pass an ordinance, to be termed the **annual appropriation bill,** in which such corporate authorities may appropriate such sum or sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, not exceeding in the aggregate the amount of tax authorized to be levied during that year; and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriation shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or village, either by a petition signed by them or at a general or special election duly called therefor, and all appropriations shall end with the fiscal year for which they were made.

Appropriation must be made before a contract incurring expense to the city can be entered into. **21**, 258 (31 N. W., 790). Limitations on power of council do not apply to money borrowed for a specific purpose pursuant to a popular vote. Section does not apply where a proposition to borrow money for a specific purpose has been adopted by a majority of the legal voters. **27**, 452 (43 N. W., 244).

2910. Before such annual appropriation bill shall be passed, the council or trustees shall prepare an estimate of the probable amount of money necessary for all purposes to be raised in said city or village during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the different objects and branches of **expenditures,** as near as may be, with a statement of the entire revenue of the city or village for the previous fiscal year, and shall enter the same at large upon its minutes, and cause the same to be published four weeks in some newspaper published or of general circulation in the city or village.

2911. The mayor and council or board of trustees shall have **no** power to appropriate, issue, or draw any order or warrant on the treasurer for **money,** unless the same has been appropriated or ordered by ordinance, or the claim for the payment of which such order or warrant is issued has been allowed according to the provisions of this chapter, and appropriations for the class or object out of which such claim is payable has been made as provided in section 86 [2909]. Neither the city council or the board of trustees nor any department or officer of the corporation shall add to the corporation expenditures in any one year anything over and **above** the **amount provided** for in the annual appropriation bill for that year, **except** as herein otherwise specially provided, and no expenditure for any improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill; *Provided, however*, That nothing herein contained shall prevent the city council or board of trustees from ordering, by a two-thirds vote, the repair or restoration of any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. The city council or board of trustees may, by a like vote, order the mayor or chairman of the board of trustees and finance committee to borrow a sufficient sum to provide for the expense necessary to be incurred in making any repairs, or restoration of improvements, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum, and the interest, shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor, or the board of trustees, and finance committee, under the sanction of the city council or board of trustees, may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall, in like manner, be added to the amount authorized to be raised in the general tax levy of the next year, and embraced therein.

2912. No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and **no expense** shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or board of trustees or not, unless an **appropriation** shall have been previously made concerning such expense, except as herein otherwise expressly provided.

2913. All money received on **special assessments** shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

CONSOLIDATION AND ANNEXATION OF CITIES AND VILAGES.

2914. Any two or more **cities** or villages, governed by the provisions of this chapter, lying adjacent to each other, may **consolidate** and become one city or municipal corporation, as the case may be, and under the name and with the powers, obligations, and duties of the city or municipal corporation, whose name shall be assumed and adopted in the proceedings in this chapter provided.

2915. When any city or village shall desire to be annexed to another and contiguous city or village, the council or trustees of each city or village shall appoint three commissioners to arrange and report to such council or trustees respectively the terms and conditions on which the proposed **annexation** can be made; and if the council or trustees of each of such cities or villages approve of the terms and conditions proposed, they shall, by proper ordinance, so declare; and thereupon the council or trustees of each of such cities or villages, by ordinance passed at least one month prior to the general annual election therein, may submit the question of such annexation, upon the said terms and conditions so proposed, to the electors of their respective cities or villages, and if a majority of the electors of each vote in favor of such annexation, the council or trustees of each shall, by proper ordinance, so declare; and a certified copy of the whole proceedings for annexation of the city or village to be annexed shall be filed with the clerk of the city or village to which the annexation is made.

2916. When certified copies of the proceedings for annexation are filed as contemplated in the preceding section, the annexation shall be deemed complete, and the city or village to which the annexation is made shall have power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation; and thereafter the city or village annexed shall be governed as part of the city or village to which annexation of it is made; *Provided*, That such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or villages, but they may be enforced the same as if no such annexation had taken place.

2917. Whenever a city or village is thus annexed to another, the property, both real and personal, the notes, bonds, obligations, accounts, demands, evidences of debts, rights, and cases in action, franchises, books, records, maps, plats, and effects of every nature, of and belonging to the two adjacent cities, or municipal corporations, so annexed, shall be the property of and belong to the corporation to which it is annexed.

2918. Whenever the owner or owners and inhabitants, or a majority thereof in numbers or value, of any territory lying contiguous to the corporate limits of any city or village, whether said territory be already in fact subdivided into lots or parcels of ten acres or less, or remains unsubdivided, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the said territory to be made, showing such territory subdivided into blocks and lots, and conforming as near as may be to the blocks, lots, and streets of the adjacent city or village, and also showing the descriptions and numberings mentioned in said act relating to cities and villages under the title of "City and Village Plats," and conforming thereto as nearly as may be, said plat or map to be prepared under the supervision of the city engineer in case of annexation to adjacent cities, and under the supervision of a competent surveyor in any case, and a copy of said plat or map, certified by said engineer or surveyor, as the case may be, shall be filed in the office of the clerk of the city or village, together with a request in writing, signed by a majority of the property owners and inhabitants in numbers and value of the territory described in said plat for the annexation of said territory; and the city council or board of trustees shall, at the next regular meeting thereof after the filing of such plat and request for annexation, vote upon the question of such annexation, and such vote shall be spread upon the journal of said council or board of trustees. If a majority of all the members of the council or board of trustees vote for such annexation, an ordinance shall be prepared and passed by said council or board declaring the annexation of said territory to the corporate limits of said city or village, and extending the limits thereof accordingly; and an accurate map or plat of said territory, as hereinbefore described, certified by said engineer or surveyor, and acknowledged and proven as provided by law in such cases, shall at once be filed and recorded in the office of the county clerk or recorder of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village, and thereupon such annexation of said adjacent territory shall be deemed complete, and the territory included and described in said plat on file in the clerk or recorder's office shall be deemed and held to be a part of said original corporate city or village, and the inhabitants thereof shall thereafter enjoy the privileges and benefits of such annexation, and be subject to the ordinances and regulations of said city or village; *Provided*, That such adjacent territory so annexed shall not be taxed for any indebtedness of the city or village to which such territory is annexed, existing prior to the date of the completion of such annexation.

Rewritten 1881, p. 188. Secs. 96 to 98 repealed 1881, p. 193.

2919. When any city or village shall desire to annex to its corporate limits any contiguous territory, whether such territory be in fact subdivided into tracts or parcels of ten acres or less, or be not so subdivided, the council or board of trustees of said corporation shall vote upon the question of such annexation, and if a resolution to annex such territory, describing the same in general terms, be adopted by two-thirds vote of all the members elect of such council or board of trustees, said resolution, and the vote thereon, shall be spread upon the records of said council or board. Said city or village may thereupon present to the district court of the county in which such territory lies, a petition praying for the annexation of such territory, together with an accurate plat or map of the same, showing the subdivisions of said territory, if it be so subdivided, and its relative position to such a city or village; and such petition shall set forth the resolution of said council or board of trustees for annexation of the same, and the vote thereon, and also the names of the various owners of said territory, if there be more than one such owner, and shall also set forth the material benefits and advantages to be derived from such annexation. A notice of the filing of said petition shall be served upon the owner or owners of said adjacent territory in the same manner as a summons in civil actions; and in case said owner or owners be non-residents of the state, said notice shall be published in the manner provided for service by publication in civil actions. Issues shall be joined and the cause tried in the same manner, as nearly as may be, as provided for trial of causes under the code of civil procedure, except that no judgment for costs shall be rendered against any defendant who does not make any defense. If the court find the allegations of the petition to be true, and that such territory, or any part thereof, would receive material benefit by its annexation to such corporation, or that justice and equity require such annexation of said territory, or any part thereof, a decree shall be entered accordingly; and a copy of the decree of said court, duly certified under the seal thereof, together with a plat of the territory with a proper description thereof, so decreed to be annexed, and in case the same is already subdivided, showing the same subdivided into blocks and lots to correspond as near as may be with the fact, and as near as may be with the lots, blocks, and streets of the adjacent city or village, and corresponding as near as may be to the provisions of said act, under the title of "city and village plats," shall be filed and recorded in the office of the county clerk or recorder of the county in which such territory lies; and from the time of filing of such decree and plat, the territory therein described shall be included in and become a part of such city or village, and the inhabitants thereof shall receive the benefits of and be subject to the ordinances and regulations of such city or village; *Provided*, That appeals may be taken from the proceedings aforesaid in the district court, as in other civil cases; but notice of appeal must be given immediately on the entering of the decree in said district court, and the filing of the said decree and plat in the county clerk's office shall be stayed to abide the event of such appeal, and in case such appeal be not perfected, said corporation may file said decree and plat as hereinbefore provided for, without being prejudiced by lapse of time. On the filing of such decree and plat the council or board of trustees shall pass an ordinance declaring such territory to be annexed to such city or village, and extending the corporate limits thereof accordingly; and file a certified copy of the same in the clerk's office.

Rewritten 1881, p. 190. District court has jurisdiction; must first find allegation of petition to be true and then decree accordingly. 23, 426 (36 N. W., 813).

2920. Whenever a majority of the legal voters of any territory within any city or village, and being upon the border, and within the boundary thereof, shall petition the district court of the county in which such city or village is situated, praying to be disconnected therefrom, such petition shall be filed with the clerk of the court at least ten days prior to the first day of the term at which it is proposed to be heard, and like proceedings shall be had thereon as is required in section ninety-nine, as amended in this act [2919], for the annexation of territory to cities and villages, so far as the same are applicable; *Provided*, That the provisions of this section shall apply only to lands not laid out into city or village block or lots; **And provided*, *also*, That in case any territory be disconnected from any city or village, a certified copy of the ordinance or decree disconnecting the same, together with a plat of the disconnected territory, shall be filed and recorded in the office of the clerk of the proper county.

Amended and all after * added 1881, p. 192. Sec. 102 repealed 1881, p. 193.

2921. Nothing herein contained shall be construed as to affect the boundaries or limits of any city or village now established under any law existing at the adoption of this chaptor, but such limits and boundaries shall remain as established until changed in the manner provided by law.

CITY AND VILLAGE PLATS.

2922. Every original owner or proprietor of any track or parcel of land who has heretofore subdivided or shall hereafter subdivide the same into three or more parts for the purpose of laying out any city or village or any addition thereto or any part thereof, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all the subdivisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions and length and breadth thereof, and the breadth and courses of all streets and [alleys] established therein. Descriptions of lots and parcels of land in such subdivisions, according to the number and designation thereof on said plat contained, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes. The duty to file for record a plat as provided herein shall attach as a covenant of warranty in all conveyances hereafter made of any part or parcel of such subdivision by the original owner or proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee or person claiming under him, in consequence of the omission on the part of said owner or proprietors to file such plat.

County clerk and not owner of land entitled to possession of plats. 24, 47 (38 N. W., 25).

2923. Every such plat shall contain a statement to the effect that the above or foregoing subdivision of (here insert a correct description of the land or parcel subdivided), as appears on this plat, is with the free consent and in accordance with the desire of the undersigned owners and proprietors, and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds; and when thus executed and acknowledged, said plat shall be filed for record and recorded in the office of the recorder of the proper county.

2924. The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use, or as is thereon dedicated to charitable, religious, or educational purposes.

See 13, 355 (14 N. W., 423).

2925. **Streets** and alleys laid out in any addition to any city or village shall be **continuous** with and correspond in direction and width to the streets and alleys of the city or village to which they are an addition.

2926. Any such **plat** may be **vacated** by the proprietors thereof at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged, or proved and recorded in the same office with the plat to be vacated; and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. And in cases where any lots have been sold, the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

2927. Any part of a **plat** may be **vacated** under the provisions and **subject** to the conditions of this chapter; *Provided,* Such vacation does not abridge or destroy any of the **rights** and privileges of other proprietors in said plat; *And provided further,* That nothing contained in this section shall authorize the closing or obstructing of any public highway laid out according to law.

2928. When any part of a **plat** shall be **vacated** as aforesaid, the proprietors of the lots so vacated may **enclose** the **streets,** alleys, and public grounds adjoining said lots in equal proportion.

2929. The county **clerk** in whose office the plats aforesaid are recorded shall **write** in plain, legible letters, across that part of said plat so vacated, the word "**vacated,**" and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

2930. **[Part owner—Replatting.]**—The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor; and when such plat is acknowledged by such owner, and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

2931. Whenever the original owner or proprietor of any subdivision of land as contemplated in section 104 of this chapter [2922], have sold or conveyed any part thereof or invested the public with any rights therein, and have failed and neglected to execute and file for record a **plat** as provided in section 104 of this chapter [2922], the county clerk shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of said plat as provided; and if such owners or proprietors, whether notified or not, fail and **neglect to** execute and **file** for record said plat for thirty days after the issuance of such notice, the **clerk** shall **shall cause to be made** the plat of such subdivision, and any surveying necessary therefor. Said plat shall be signed and acknowledged by the clerk, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record; and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged, and recorded by the owners or proprietors themselves. A correct statement of the costs, and expenses of such plat, surveying, and recording, verified by oath, shall be by the clerk laid before the first session of the county board, who shall allow the same and order the same to be paid out of the county treasury, and who shall at the same time assess the said amount, *pro rata,* upon all several subdivisions of said tract, lot, or parcel, so subdivided; and said assessment shall be collected with and in like manner as the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction; to recover of the said original owners or proprietors, or either of them, said cost and expense of procuring and recording said plat.

2932. Whenever any congressional subdivision of **land** of forty acres or less or any lot or subdivision is **owned by two** or more persons **in severalty,** and the description of one or more of the different parts or parcels thereof cannot, in the judgment of the county clerk, be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, the clerk shall require and cause to be made and recorded a **plat** of such tract or lot of land with its several subdivisions, in accordance with the provisions of this chapter; and he shall proceed in such cases according to the provisions of section 113, and all the provisions of said section in relation to the plats of cities and villages, and so forth, shall govern as to the tracts and parcels of land in this section referred to.

2933. None of the provisions of this chapter shall be construed to require replatting in any case where **plats** have been made and **recorded** in pursuance to any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared **valid,** notwithstanding irregularities and omissions in manner or form of acknowledgment or certificate; but the provisions of this section shall not affect any action or proceeding now pending.

Cures defects in former plats. 21, 268 (31 N. W., 797.)

2934. **[Sale before platting.]**—Any person who shall dispose of, or offer for sale, or lease, any lots in any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased, or offered for sale.

2935. "An act to incorporate cities of the second class and to define their powers," approved March 1, 1871, and all acts amendatory thereof or supplemental thereto; "An act to provide the manner of collecting taxes in cities of the second class and define their powers of certain officers," approved June 6, 1871; "An act relating to incorporated towns and villages," approved February 27, 1873; "An act to provide a uniform method of platting and dedicating town sites," approved February 25, 1875, and all **acts** and parts of acts inconsistent with the provisions of this act are hereby **repealed.**

Act of February 19, 1877, held unconstitutional. 9, 352 (2 N. W., 722).

Secs. 2936 to 2940. "An act to authorize any city of the second class in this state to establish, maintain, operate, and control a system of electric lights and to fix rates of charges for the use of lights and provide for the collection of such charges." 1889, p. 350. In force March 30.

2936. Any city of the second class in this state shall have the power and is hereby authorized to establish and maintain a system of electric lights for such city, and the city council shall have the power to levy a **tax** not exceeding five (5) mills on the dollar in any one year for the purpose of establishing, extending, and maintaining such system of electric lights.

Telephones; electric light wires; priority of construction. 27, 284 (43 N. W., 126).

2937. Where the amount of money which would be raised by the levy provided for in section one of this act would be insufficient to establish a system of electric lights as contemplated herein, in any city in this state, such city may issue its **bonds** bearing not to exceed seven per cent interest and maturing in twenty years, but payable at any time after the expiration of ten years at the option of the city, for the purpose of raising a sum sufficient to establish such electric light system; *Provided,* That the aggregate of bonds issued for such purpose shall not exceed two and one-half per cent of the taxable value of the property of such city as shown by the last previous annual assessment; *And provided further,* That no such bonds shall be issued by the city council until the question of issuing the same shall have been submitted to the electors of such city at an election held for that purpose, notice of which shall be given by publication in some newspaper published in said city at least twenty days prior to the date of said election, and a majority of such electors shall have voted in favor of issuing such bonds; *Provided*, No such election shall be called until a petition signed by at least ten resident freeholders from each ward of said city shall be presented to the mayor and council asking that an election be called for the purpose herein provided. When any city has established a system of electric lights as herein contemplated, the city council shall have power to levy an annual tax of not to exceed two (2) mills on the dollar of the assessed valuation of the city, for the purpose of maintaining, operating, and extending the same.

2938. All **contracts for** the erection or **construction** of any such system of electric lights or any part thereof or any extension thereof shall be let to the lowest responsible bidder therefor upon not less than twenty days' public notice of the terms and conditions upon which the contract is to be let, having been given by publication in a newspaper published in said city; *Provided*, That no member of the city council or mayor shall be directly or indirectly interested in any such contract. And in all cases the council shall have the right to reject any and all bids that may not be satisfactory to them, and when any such contract shall have been awarded as herein provided, the mayor and council shall have the right to require the person, persons, company, or corporation to whom such contract shall be awarded to enter into a bond with good and sufficient sureties, to be approved by said mayor and council and in such sum as they shall deem sufficient to secure the faithful performance of the conditions of such contract.

2939. Where any city shall have established an electric light system, it shall provide by ordinance for the management and **control** of the same, and the **rates** to be charged to persons using such lights. In cities having and maintaining a system of water-works, and having a water commissioner, such water commissioner shall be ex-officio **light commissioner.** In cities having no water commissioner, the mayor shall, with the advice and consent of the city council, appoint some resident freeholder of such city as light commissioner, who shall hold his office until the end of the municipal year, and until his successor shall be appointed and shall have qualified. Before entering upon the duties of his office the light commissioner so appointed shall give bond to the city in such sum as may be required by the city council, conditioned for the faithful performance of his duties, and signed by two or more good and sufficient sureties, resident freeholders of such city, and shall also take an oath to faithfully and impartially discharge the duties of his office. Such commissioner shall have general management and control of the system of electric light in such city, under the direction of the city council, and shall collect all moneys receivable by the city for rents and lights, and shall faithfully account for all moneys that may come into his hands, and perform such other duties as may be required of him by ordinance. He shall make a detailed report to the city council at least every six months, showing the condition of such system, and of all such improvements, repairs, extensions, and additional machinery, which he may think proper to make or obtain, together with an estimate of the cost thereof. He shall also at the same time make a detailed report of all expenses incurred in the running and management of such system of lights since his last previous report. He shall receive a salary to be fixed by the city council, by ordinance, and may be removed at any time by a two-thirds vote of the council.

2940. The city council shall fix by ordinance the **rates** to be charged for the use of its lights, and shall provide the manner of collecting the same. The commissioner shall make duplicate **receipts** for all moneys collected, one of which shall be given to the person from whom the money is collected, and the other shall be retained in his office, and delivered to his successor in office. All money collected for the use of electric lights shall be paid over to the city treasurer and kept by him in a **separate fund**, and be used for the operation, maintenance, repair, and extension of such system, under the direction of the city council.

SEC. 2941. "An act to empower cities to acquire real estate by gift or devise for **parks** and public grounds and protection of such real estate." 1889, p. 367. In force February 25.

2941. **Cities** and villages in this state are empowered and authorized to **receive** by gift or devise real estate within their corporate limits or within five miles thereof for purposes of **parks** or public grounds. Such real estate shall be vested in the city or village upon the conditions imposed by the donors, and upon the acceptance by the mayor and city council or the board of trustees, the jurisdiction of the city council or board of trustees shall be hereby extended over such real estate. The city council and board of trustees of villages shall have power to enact by-laws, **rules**, and ordinances for the protection and preservation of any real estate acquired as herein contemplated, and to provide suitable penalties for the violation of any such by-laws, rules, or ordinances. The police power of any city or village that shall acquire any real estate as herein contemplated shall be at once extended over the same by virtue of this act.

SECS. 2942 to 2948. "An act to provide for the more efficient management and care of cemetery and cemetery grounds in cities of the second class and villages, and for the incorporation of lot owners in such cemeteries, and repeal paragraphs 34, 35, 36 of section 69, chapter 14, entitled 'Cities of the Second Class, and Villages.'" 1887, p. 330. In force July 1.

2942. That whenever, in cities of the second class and villages, one-fifth of the resident lot owners of any cemetery under the control of such city shall so desire it, it shall be lawful for such lot owners to associate themselves into and form a **cemetery association,** as provided in section 45 of chapter 16 of the Compiled Statutes of the state of Nebraska [717], and elect officers thereof.

Has no application to cities over 5,000. Question of whether act is repealed by ch. 12, Laws 1887, p. 291, raised but not decided. **23,** 421 (36 N. W., 811).

2943. Upon the formation of such cemetery association, the lot owners in such cemetery shall elect five of their number as trustees, to whom is given the general care, management, and supervision of such cemetery. The mayor or chairman of such city or village shall, by virtue of his office, be a member of the board of **trustees,** and it shall be his duty to make, execute, and deliver to purchasers of lots deeds therefor, when requested by such board of trustees. Such **deed** shall be executed under the corporate seal of such city, and countersigned by the clerk, specifying that the person to whom the same is issued is the owner, for the purposes of interment, of the **lot** or lots described therein by numbers, as laid down on the map or plat of such cemetery; and such deed shall vest in the proprietor, his or her heirs or assigns, a right in fee simple to such lot for the sole purpose of interment, under the regulations of the board of trustees; and such deed shall be entitled to be recorded in the office of the county clerk of the proper county without further acknowledgment or authentication, and such description of lots shall be deemed and recognized as a sufficient description thereof.

2944. Said board of **trustees** shall have **power** to limit the number of cemetery lots that shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning, and erecting monuments and tombstones on cemetery lots; to prohibit any diversions of the use of such lots, and any improper adornment thereof, but no religious tests shall be made as to the ownership of lots, the burial therein, or the ornamentation of graves or of such lots.

2945. Such board of trustees shall have power to pass rules and ordinances imposing penalties and fines, not exceeding one hundred dollars, regulating, governing, and protecting the cemetery, the owners of lots therein, visitors thereof, and trespassers therein. And the officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules and ordinances as though they related to the corporation of such city or village itself.

2946. All moneys received from the sale of lots in any such cemetery, or which may come to it by gifts or devise, or otherwise, shall be devoted exclusively to the care, management, adornment, and government of such cemetery itself, and shall be expended exclusively for such purposes under the direction of such board of trustees.

2947. Upon the organization of such cemetery association as herein provided, all property and moneys now under the control of the city council or village trustees shall vest in such cemetery association for the purposes aforesaid, and all moneys in the control of such city council or village trustees shall be turned over to the board of trustees of such cemetery association.

2948. Paragraphs 34, 35, and 36 of section 69 of chapter 14, entitled "Cities of the Second class, and Villages," of the Compiled Statutes of the state of Nebraska, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed; *Provided*, That all rights accrued under the power contained in said section are hereby confirmed.

Secs. 2949 and 2950. "An act to continue the organization of cities of the second class and to legalize their acts and elections thereunder." 1881, p. 164. In force February 28.

2949. That in all cases where any municipal corporation containing less than fifteen hundred and more than one thousand inhabitants shall have legally organized as a city of the second class, under a law in force at the time of such organization, and shall not have organized as a village under the provisions of the act to provide for the organization, government, and powers of cities and villages, approved March 1, 1879, and shall not so organize by the election of officers on the first Tuesday of April, 1881, the organization of such corporation as a city of the second class shall continue and be in force until changed as now provided by law.

2950. That all acts performed and elections held by such corporations so legally organized as cities of the second class under the laws in force at the time of such organization shall be held to be as valid for all purposes as if done and held by and in cities of the second class duly organized under the laws in force for that purpose.

Secs. 2951 and 2952. "An act to legalize the incorporation of certain villages and all acts, by-laws, and ordinances thereof, and to constitute its board of trustees a legal body." 1881, p. 199. In force June 1.

2951. That all villages having more than two hundred inhabitants, who have associated themselves together by written agreement or by petition of a majority of the legal voters therein, designating the object of their association to be the incorporation of a village, under the laws of Nebraska, and showing therein the boundaries of the same, and having a board of trustees elected by a majority of the legal voters of said village, who are acting conformable to the law of the state of Nebraska, regulating the powers and duties of the boards of trustees of villages, be and the same are hereby declared to be duly and lawfully organized and incorporated as villages under the laws of this state, together with all additions that have been made thereto. And such villages, and their boards of trustees, and the officers by them appointed, and all acts, by-laws, and ordinances done and adopted by them are hereby declared to be legal and valid, and shall have all the force and effect given to the acts, by-laws, and ordinances of villages incorporated under the laws of this state.

Amended 1883, p. 115.

2952. **Such villages** shall be governed by the law of this state regulating villages, and shall have and exercise all the **powers** and privileges of villages duly incorporated under the laws of this state, and their said trustees and officers shall have and exercise all the powers and privileges of trustees and officers under the laws of this state concerning villages.

Secs. 2953 to 2956. "An act to provide for **vacating streets**, alleys, and **public grounds** in towns and villages." 1871, p. 125. In force March 10.

2953. Any person seeking to have any street, alley, or public grounds, in any town or village, vacated, shall give thirty days' **notice** of the intended application therefor to the county commissioners for the vacation of such street, alley, or public grounds, by posting five notices in as many of the most public places within the limits of the said town or village. Such notices shall contain a particular description of the street, alley, or public grounds desired to be vacated, and the time at which the application will be made to the county board for the order of vacation.

2954. Upon the application of any person to the county board for the vacation of any street, alley, or public grounds, proving by the oath of two persons that the foregoing section has been complied with, and by giving bond with sufficient security for all costs payable to the county, the board shall appoint three disinterested householders of the town or village to **examine** the street, alley, or public grounds, and at the next regular meeting of the board **report** whether in their opinion any injustice or inconvenience will be worked by the vacation of such street, alley, or public grounds. The board, upon such report and other testimony presented by the applicant, or others opposing the vacation, shall decide for or against such vacation.

2955. The county **board,** if convinced that no injustice will be worked by any person or persons by such vacation, shall **order** such **vacation,** and in all cases they shall cause all expenses arising from the application and the ensuing proceedings to be paid by the party or parties applying for such vacation.

2956. The street, alley, or public grounds thus **vacated** shall become the **property** of owners of real estate thereto adjacent, on each side, in proportion to the frontage of such real estate. The county clerk shall make a quitclaim **deed,** in the name of the county, to the different persons to whom such street, alley, or public grounds may inure, signing said deed, and attaching the county seal thereto, and such deed shall convey all the title vested in the county.

Secs. 2957 to 2961. "An act to provide for the **abolishment of** 'incorporation of villages' in any **village** which may have been incorporated and its return to county **government** after such abolishment." 1885, p. 156. In force June 5.

2957. Any village of the state of Nebraska which may have been incorporated under the laws of this state shall abolish the same whenever a **majority** of the electors of said village, **voting** on the question of such abolishment, shall so decide, in the manner herein provided.

2958. Whenever a petition or petitions for **submission of** the **question** of the abolishment of incorporation to the voters of any village, signed by not less than one-third of the electors and taxpayers of said village, shall be filed in the office of the county clerk of the county in which such village is situated, not less than thirty days before the date of any general election, it shall be the duty of such county clerk to cause said question to be submitted to the voters of said village at such election, and give notice thereof in the general notice of such election; *Provided,* That no village shall abolish incorporation until all liabilities are liquidated.

2959. The forms of **ballot** shall be respectively, "For abolishment of incorporation," and "Against abolishment of incorporation," and the same shall be written or printed upon the regular ballots cast for officers voted for at such election, and shall be counted and canvassed in the same manner.

2960. If it shall be decided at such election that **incorporation** of said village be **abolished,** then from and after the first day of January next ensuing, "incorporation of said village" shall cease and be abolished, and said village shall thereafter be governed by county commissioners as provided by law.

2961. That upon abolishment of incorporation all **corporate property** belonging to said village shall be placed in the hands of the road overseer of the district in which said village is located, or sold, as shall be deemed by the trustees of said village for the best interest of said district, and if the proceeds exceed the sum of one hundred dollars, shall be placed in the hands of the county treasurer, to be paid out by order of the county commissioners for the exclusive use of the road district in which said village is located.

Secs. 2962 and 2963. "An act to punish city and village **officers** who become **interested in contracts** with the city or village, or who furnish any material to any person contracting with the city or village." 1889, p. 344. In force March 15.

2962. Any **officer of** any **city** in the state who shall hereafter be interested, directly or indirectly, in any contract to which the city is a party, or who shall enter into any contract to furnish, or shall furnish to any contractor, or subcontractor, with a city of which he is an officer, any material to be used in performing any contract with such city, shall, upon conviction thereof, be **fined** in any sum not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000).

2963. Any **officer of** any **village** in this state who shall hereafter be interested, directly or indirectly, in any contract to which such village is a party, or who shall enter into any contract to furnish, or shall furnish to any contractor or subcontractor with the village of which he is an officer, any material to be used in performing any contract with such village, shall, upon conviction thereof, be **fined** in any sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

CHAPTER 36.—NAMES.

Secs. 2964 to 2967. "An act to authorize district courts to change names of persons, towns, villages, and cities within this state." 1871, p. 62. In force March 9.

2964. That the district court shall have authority to change the names of persons, towns, villages, and cities within this state.

2965. That any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth: *First*—That the petitioner has been a *bona fide* citizen of such county for at least one year prior to the filing of the petition. *Second*—The cause for which the [change of] petitioner's name is sought. *Third*—The name asked for. And it shall be the duty of the district court at any term thereof after the filing of such petition, upon being duly satisfied, by proof in open court, of the truth of the allegations set forth in the petition, and that there exists proper and reasonable causes for changing the name of the petitioner, and that thirty days' previous notice of the intended application had been duly given in some newspaper printed in such county, or in case no newspaper be printed in the county, then in some newspaper in general circulation therein, to order and direct a change of name of such petitioner, and that an order for the purpose be made in the journals of such court.

2966. That whenever it may be desirable to change the name of any town, village, or city in any county of the state, a petition for that purpose may, in like manner, be filed in the district court of such county, signed by a majority of the legal voters of such town, village, or city, setting forth the cause why such change is desirable, and the name prayed for to be substituted, and the court, upon being satisfied by proof that the prayer of the petitioners is reasonable and just, and that notice as required in the foregoing section had been given, and that two-thirds of the legal voters of such town, village, or city desire the said change, and that there is no other town, village, or city in the state of the name prayed for, may order the change prayed for in such petition.

2967. All proceedings under this act shall be at the cost of the petitioner or petitioners, for which fee-bill, or execution, may issue as in civil cases; *Provided always*, That any change of names under the provisions of this act shall not in any manner affect or alter any right of action, legal process, or property.

CHAPTER 37.—NEGOTIABLE INSTRUMENTS.

Secs. 2968 to 2974 formed ch. 27 R. S. 1866, p. 239, entitled "**Instruments Negotiable.**"

2968. All bonds, promissory notes, bills of exchange, foreign and inland, drawn for any sum or sums of money certain, and made payable to any person or order, or to any person or assigns, shall be **negotiable by endorsement** thereon, so as absolutely to transfer and vest the property thereof in each and every endorsee successively, but nothing in this section shall be construed to make negotiable any such bond, note, or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to order, bearer, or assigns; *Provided*, That all such bonds, promissory notes, and bills of exchange, made payable to bearer, shall be transferable by delivery without endorsement thereon.

Note not negotiable unless payable to order, bearer, or assigns. **6,** 381. Provision for attorney's fees does not render a note non-negotiable. **8,** 14; **8,** 27. A written guarantee is an endorsement. **28,** 500 (44 N. W., 485). See **4,** 579; **20,** 340 (30 N. W., 249).

2969. Any **endorsee** to whom any such bond, note, or bill of exchange, made negotiable by the preceding section, is made payable by such endorsement or endorsements, may, in his own name, institute and **maintain an action** on such bond, note, or bill, for the recovery of the money due thereon, against the maker, drawer, or obligor, or against the endorsee, having first used due diligence to obtain the money of the drawer, maker, or obligor.

Instrument bearing no date of payment, but stating that "on default of prompt payment of the interest for thirty days after it is due, then this note * * * shall be due," * * * is payable on demand. Endorsee for collection may sue in his own name but subject to equitable defenses of maker. **27,** 429 (43 N. W., 241). Where mother endorses note to son who pledges it as security, mother will not be allowed to contradict the legal effect of such endorsement. **8,** 156. Alteration of a negotiable instrument in a material part vitiates the instrument. **5,** 225. Genuine endorsement by payee must be shown before action can be maintained. If payee is fictitious, will be treated as payable to bearer and no endorsement necessary. If payable to some person known to exist and present to the mind of the drawer, endorsement of such payee necessary. **2,** 29.

2970. All notes, bonds, or bills made negotiable by this chapter shall be entitled to three **days' grace** in the time of payment, and the demand of payment, from the maker, on the third of grace or of acceptance, if the instrument is a sight draft, and notice of non-payment, or non-acceptance thereof to the endorser, within a reasonable time, shall be adjudged due diligence under the provisions of this chapter, unless the endorsement shall express, in writing, other conditions.

Protest on last day of grace and notice given endorser on following, held within a reasonable time. **21,** 444 (32 N. W., 217). See **9,** 28 (2 N. W., 881).

2971. If any such bond, note, or bill of exchange shall be endorsed after the day on which it is made payable, and the endorsee shall institute an action thereon against the maker, drawer, or obligor, the defendant shall be allowed to set up the same **defense** that he might have done had the same action been instituted in the name and for the use of the person to whom the said note, bond, or bill was originally made payable.

Alteration in a material way invalidates instrument. **6,** 538. Extension of time by endorsee without consent of endorser good defense. **7,** 76. Endorsee after maturity takes notes subject to defenses. **7,** 88. Endorsee cannot maintain action against guarantor and maker jointly. **9,** 448 (4 N. W., 69). Competency of witness as to handwriting where signature has been fraudulently obtained from a person by inducing him to believe he is signing a different instrument, with no fault of his, such instrument will be void even in the hands of a *bona fide* holder. **5,** 251.

2972. If any such bond, note, or bill of exchange shall be endorsed on or before the day on which the same is made payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial any money actually paid on said bond, note, or bill of exchange, before the same was endorsed or assigned to the plaintiff, on proving that the plaintiff had notice of such payment before such endorsement was made and accepted.

A note will not discharge a pre-existing debt unless it is expressly understood that the original indebtedness is paid. **5,** 437. Memorandum on back of note held to be a part of note. **8,** 383.

2973. It shall be lawful for any person or persons having a right to demand any sum of money upon any protested bond, note, or bill of exchange as aforesaid to commence and prosecute an action for principal, damages, interest, and charges of protest against the drawers, makers, or endorsers, jointly or severally, or against either of them separately. And judgment shall and may be given for such principal, damages, charges, and interest upon such principal, after the rate aforesaid, to the time of such judgment, together with costs of suit.

Endorsee after maturity takes a note subject to all defenses the original maker would have. **7,** 82. See **1,** 415; **4,** 427.

2974. When any bill of exchange shall be drawn for the payment of any such sum of money, and such bill shall be legally protested for non-acceptance or non-payment, the drawer or drawers, endorser or endorsers shall be subject to the payment of twelve per centum damages thereon, if drawn upon any person or persons or body corporate without the jurisdiction of the United States, and six per centum damages thereon, if drawn upon any persons or body corporate within the jurisdiction of the United States, and without the jurisdiction of this state.

Sec. 2975. "An act to designate certain days to be observed as holidays in respect to bills of exchange, promissory notes, and bank checks." 1873. In force February 18. G. S., 427.

2975. That the following days, to-wit: the first day of January, February twenty-second, and the twenty-second of April, which shall be known as "Arbor Day," the twenty-fifth day of December, the thirtieth day of May, and July fourth, and any day appointed or recommended by the governor of this state, or the president of the United States, as a day of fast or thanksgiving, and when any one of these days shall occur on Sunday, then the Monday following, shall, for all purposes whatsoever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks, or promissory notes, made after the passage of this act, be deemed public holidays, and be treated and considered as is the first day of each week, commonly called Sunday; *Provided,* That when any one of these days shall occur on Monday, any bill of exchange, bank check, or promissory note made after the passage of this act, which but for this act would fall due and be payable on such Monday, shall become due and payable on the day thereafter.

Arbor day added 1885, p. 266. Adjournment of court to, and opening it on, Thanksgiving day, no step in the case being taken on that day, is not cause for new trial. **14,** 546 (16 N. W., 898).

Sec. 2976. "An act providing for a holiday to be known as 'Labor Day.'" 1889, p. 579. In force June 30.

2976. The first Monday in the month of September in each year shall hereafter be known as "Labor Day," and shall be deemed a public holiday in like manner and to the same extent as the holidays provided for in section eight (8) of chapter forty-one (41) of the Compiled Statutes of 1887 [2975].

CHAPTER 38.—OATHS AND AFFIRMATIONS.

Sec. 2977 formed ch. 39, R. S. 1866, p. 274.

2977. **Oaths** and affirmations may be **administered** in all cases whatsoever, **by** judges of the supreme court, judges of the district courts, clerk of the supreme court, clerks of the district courts within their respective districts, and by probate judges, justices of the peace, and notaries public within their respective counties.

A complaint may be sworn to before clerk of district court. 26, 757 (42 N. W., 762).

CHAPTER 39.—OFFICERS.

I. BONDS.

Secs. 2978 to 3001. "An act concerning official bonds and oaths." 1881, p. 94. In force February 28.

2978. All state, district, county, precinct, township, municipal, and especially appointed **officers,** except those mentioned in section one, article 14, of the constitution, shall, before entering upon their respective duties, take and subscribe the following **oath,** which shall be endorsed upon their respective bonds: "I do solemnly swear that I will support the constitution of the United States, the constitution of the state of Nebraska, and faithfully and impartially perform the duties of the office of ———, according to law, and to the best of my ability. So help me God." If any such officer is not required to give bond, the oath shall be filed in the office of the secretary of state, or the clerk of the county, city, village, or other municipal subdivision of which he shall be an officer.

Sureties of justice of the peace liable for official misconduct of principal. **6,** 535. The sureties of a justice are liable for all moneys received by him in his official capacity; but not for moneys paid him on notes left with him for collection. **10,** 484 (6 N. W., 597). Sureties on bond of clerk of a court of record are liable for money paid to him upon a judgment in his office. **13,** 568 (14 N. W., 532). In action on official bond of county treasurer, it was held that the sureties might prove, as a defense, that the defalcation occurred before the giving of the bond sued on, and that the statement made to the county board by the treasurer as to the amount of money on hand at the commencement of his third term were not conclusive upon the sureties. **13,** 103 (13 N. W. 19).

2979. All official **bonds** of **state officers** must be in **form,** joint and several, and made **payable to** the **state** of Nebraska in such penalty and with such conditions as required by this act, or the law creating or regulating the office.

2980. All official bonds of **county,** township, school district, and precinct **officers** must be in **form,** joint and several, and made **payable to** the **county** in which the officer giving the same shall be elected or appointed, in such penalty and with such conditions as required by this act, or the law creating or regulating the duties of the office.

Failure to insert names of sureties in the body of bond of no consequence. **4,** 566. Errors do not vitiate. **8,** 347. Sureties on bond of county officers liable only for acts done by their principals in their official capacity. **9,** 240 (2 N. W., 219). That bond was made to "the people of the state of Nebraska," instead of to Dodge county, does not vitiate it. **12,** 98 (10 N. W., 577).

2981. All official **bonds** of **officers** of **cities,** towns, and **villages** shall be in all respects as required by the last preceding section, except that they shall be made **payable to** the **city,** town, or village in and for which the officers giving the same shall be elected or appointed, in such penalty as the city, town, or village council or trustees may fix.

2982. Official **bonds,** with the oath endorsed thereon, shall be **filed** in the proper office within the **times** as follows: Of all officers elected at any general election on or before the first Thursday after the first Tuesday in January next, succeeding the election; of all appointed officers within thirty days after their appointment; of officers elected at any special election, and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

2983. The official **bonds** of all **state** and district **officers** except governor shall be **approved** by the governor, and filed and recorded in the office of the secretary of state. The official bond of the governor shall be approved by the chief justice of the supreme court. The official bond of the secretary of state shall be filed and recorded in the office of the auditor of public accounts.

2984. The official **bonds** of all **county,** precinct, and township **officers** shall be **approved** by the county board; *Provided,* The official bonds of the county commissioners or supervisors shall be approved by the county judge. The bonds of **notary public** shall be approved by the county clerk. All such bonds shall be filed and recorded in the office of the county clerk, except the bonds of the county clerk and the members of the county board, which shall be filed and recorded in the office of the county judge. The official bond of **school** district **treasurer** must be approved by the director and moderator and filed in the office of the clerk of the county.

2985. All official **bonds** of **state officers** shall be executed by the principal named in such bonds, with at least three **sureties,** who shall be residents of the state, and worth in the aggregate the amount named in such bond over and above their present indebtedness, and affidavits of the sureties showing the value of propperty owned by each, and subject to levy and sale upon execution in this state, shall be made and filed with the officer approving such bond.

2986. All official **bonds** of county, precinct, and **other officers** shall be executed by the principal named in such bonds, and at least two sufficient **sureties** who shall be freeholders of the county in which such bonds are given.

2987. The **officers** with whom any official bonds are required by law to be filed shall carefully **record** and preserve the same in their respective offices, and shall give certified **copies** thereof, when required, under the seal of their office, and shall be entitled to receive for the same the usual fee allowed by law for certified copies of records in other cases.

26, 394 (41 N. W., 988).

2988. The **approval** of each official bond shall be **endorsed** upon such bond by the officer approving the same, and no bond shall be filed and recorded until so approved.

2989. All official **bonds** shall be **obligatory** upon the principal and sureties, for the faithful discharge of all duties required by law of such principal, for the use of any persons injured by a breach of the condition of such bonds.

2990. **No** official **bond** shall be rendered **void by** reason of any **informality** or irregularity in its execution or approval.

2991. **No** state or county **officer,** or their deputies, shall be taken as security on the bond of any administrator, executor, **or** other officer, from whom by law bond is or may be required, and no practicing **attorney** shall be taken as **surety** on any official bond, or bond in any legal proceedings in the district in which he may reside.

This is rendered nugatory so far as attorneys are concerned. 17, 210 (22 N. W., 422).

2992. If any person elected or appointed to any office shall **neglect to have** his official **bond** executed and approved as provided by law, and **filed** for record within the time limited by this act, his **office** shall thereupon *ipso facto* become **vacant,** and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office.

2993. Any **person appointed to** fill a **vacancy,** before entering upon the duties of the office must give a **bond** corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

2994. When the **incumbent** of an office is **re-elected** or re-appointed **he shall** qualify by taking the oath and giving the **bond** as above directed; but **when** such officer has had public funds or property in his control, his bond shall not be approved until he has produced and fully accounted for such funds and property; and **when** it is ascertained that the **incumbent** of an office **holds over** by reason of the non-election or non-appointment of a successor, or of the neglect or refusal of the successor to qualify, he shall qualify anew within ten days from the time at which his successor, if elected, should have qualified.

2995. No person shall be **surety** for the same officer for more than two successive terms of the same office.

2996. The following named officers shall give bonds with **penalties** of the following amounts, to wit: The governor $50,000. The lieutenant governor $50,000. The auditor of public accounts $50,000. The secretary of state $50,000. The attorney general $50,000. The commissioner of public lands and buildings $50,000. The state treasurer not less than $600,000 and not less than double the amount of money that may come into his hands, to be fixed by the governor. The superintendent of public instruction $50,000. The reporter of the supreme court $10,000. The private secretary of the governor $10,000. The deputy auditor $10,000. The deputy secretary of state $10,000. The deputy state treasurer $50,000. The deputy commissioner of public lands and buildings $10,000. The state librarian $10,000. The warden of the penitentiary $10,000. The deputy warden $5,000. The superintendent of the insane hospital $10,000. The assistant superintendent $5,000. The steward $5,000. The principal of the blind asylum $10,000. The principal of the deaf and dumb asylum $10,000. The superintendent of the reform school $10,000. The secretary of the board of regents of the state university $10,000. Each clerk of the district court not less than $5,000 nor more than $10,000, to be determined by the county board. Each district attorney $5,000. Each county clerk not less than $5,000 nor more than $10,000, to be determined by the county board. Each county treasurer not less than $10,000 and not less than double the amount of money that may come into his hands, to be fixed by the county board. Each county judge in counties having less than 6,000 inhabitants $5,000, over 6,000 and less than 20,000 inhabitants $10,000, over 20,000 inhabitants $50,000. Each sheriff in counties of less than 6,000 inhabitants $5,000, and over 6,000 inhabitants $10,000. Each county superintendent of public instruction $3,000. Each county surveyor $500. Each county commissioner or supervisor when the population does not exceed 10,000, $5,000; when the population does not exceed 15,000, $10,000; when the population exceeds 20,000, $15,000. Each county coroner $5,000. Each constable $1,000. Each justice of the peace $500. Each township clerk $500. Each township treasurer $5,000. Each assessor $500. Each school district treasurer $500 or not less than double the amount that may come into his hands, the amount to be fixed by the director and moderator of the district. Each notary public $2,000. Each road overseer $500.

Principal and sureties both liable without first bringing action against principal for tort. 5, 107.

2997. **Officers not enumerated** in the preceding section, and who are or may be required to give bonds, shall give the same in such penalty as may be provided by law or fixed by the board of officers empowered to fix the same. **Deputies** shall, except as otherwise specially provided, give bonds in the same manner and for the same sum as their principals.

2998. Any **officer** or person who is **intrusted with** funds belonging to the state or any county thereof, which may come into his possession by any appropriation or otherwise, shall be responsible for the same upon his bond, and when any officer or person is intrusted with any such funds, and there is no provision of law requiring him to give a bond in a certain specified sum, he shall give bond in double the amount of the sum so intrusted to him, which, in case of **state funds,** shall be approved by the chief justice of the supreme court, and deposited in the office of the secretary of state; and in case of **county funds,** such bond shall be approved by the county commissioners and deposited in the county clerk's office. And no warrant shall be issued, or money paid over to such officer or person until said **bond** is filed as herein provided. The county commissioners of any one of the counties of this state may require the county treasurer to give **aditional** freehold **sureties** whenever in the opinion of a majority of law [said] commissioners the existing security shall become insufficient, and said commissioners are hereby also authorized and empowered to demand and receive from said county treasurer an additional bond as required by law, with good and sufficient freehold security in such sum as said commissioners or a majority of them may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of said treasurer than is or would be recovered by the penalty in the previous bond, and if any county **treasurer** shall fail or **refuse** to give such additional security or bond for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his **office** shall be considered **vacant,** and another treasurer shall be appointed agreeable to the provisions of law.

2999. The **provisions** of this act, except as otherwise provided by law, **apply to** the bonds of **receivers, executors,** administrators, and guardians.

3000. **[Former acts repealed.]**—"An act concerning official bonds and oaths," approved February 19, 1873; sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, chapter 5, Revised Statutes of 1866, entitled "Bonds;" sections 3 and 4, chapter 37, Revised Statutes of 1866, sections one and two of "An act to define the duties of the secretary of state," approved February 15, 1877; sections 9 and 10 of "An act to provide for the election of an attorney general," approved February 15, 1869; section 1 of "An act defining the duties of the commissioners of public lands and buildings," approved February 19, 1877; "An act to amend section 8, chapter 5, of the Revised Statutes," approved February 15, 1869; section 89 of "An act to establish a system of public instruction for the state of Nebraska," approved February 15, 1869; section 9 of "An act regulating the state library," approved March 3, 1871; section 8 of "An act to provide for the election of district attorneys and to define their duties," approved June 11, 1867; section 36 of "An act concerning the organization, powers, and jurisdiction of probate courts," approved March 3, 1873; section 15 of "An act for the government of the hospital for the insane," approved March 3, 1873; section 30 of "An act to provide for the erection of a penitentiary, and for the care and custody of state convicts," approved March 4, 1870; section 10 of "An act to erect and maintain an institution for the blind," approved February 19, 1875; and all acts and parts of acts inconsistent herewith are hereby repealed; *Provided,* That such repeal shall not operate as a release of any officer or his sureties from liability incurred on any official bond heretofore given by him.

3001. The **provisions** of this act shall **apply to** all **officers now holding** office, **except** that such officers shall not be required to qualify anew or file new bonds. And the principal and sureties on any bond heretofore given, and otherwise regular and valid, shall be liable for any breach of the conditions of such bond, although there were no provisions of law requiring the execution of a bond by such principal, or affixing a penalty therein.

II. FEES.

Secs. 3002 to 3038, except secs. 3008 to 3010 and 3017 to 3020, formed part of ch. 19, R. S. 1866, p. 157, entitled "Fees."

3002. The salaries and fees of the several officers hereinafter named shall be as follows.

3003. **Clerk of the supreme court.**—Docketing each cause, civil or criminal, to be charged in each case but once, seventy-five cents. Issuing summons in error, writ of error, certiorari, writ of injunction or mandate, one dollar. Dismissal, discontinuance, or continuance, twenty-five cents. Entering each cause on the bar and court calendar, fifteen cents. Issuing and docketing execution or order of sale, one dollar. Taking affidavit, twenty-five cents. Filing motion, rule, affidavit, or other paper, ten cents. Issuing attachment and filing motion therefor, seventy-five cents. Indexing each cause, direct and reverse, each docket, ten cents. Entering judgment, decree, or order on the journal, twenty-five cents. For each ten words after the first one hundred words, one cent. Entering minute of judgment, decree, or order on the appearance docket, fifteen cents. Making copy of process, pleadings, record, or other paper, or any part thereof, for each ten words one cent. Entering satisfaction, twenty-five cents. Certificate and seal, fifty cents. Every search where no other services are rendered to which any fee or fees are attached, fifteen cents.

3004. **Clerk of the district court.**—Docketing each cause, seventy-five cents. Issuing summons, order of arrest, order of attachment, order of replevin, citation, or any mesne process, and filing return, fifty cents. Entering voluntary appearance of defendant, twenty-five cents. Taking bail-bond, twenty-five cents. Filing petition, pleading, indictment, or any other paper, ten cents. Issuing attachment and filing motion therefor, seventy-five cents. Entering return of any writ or order, other than of execution, order of sale, or of attachment, twenty cents. Entering each cause on the bar and court calendar of each term of the court, fifteen cents. Indexing each cause, direct and reverse, each docket, ten cents. Drawing petit jurors, and issuing venire, therefor, fifty-cents. Attending to the striking of special jury and issuing venire, one dollar. Impaneling jury and administering oath, twenty-five cents. Certifying to the county commissioners, at the end of each term, the names of grand and petit jurors, and their terms of service and mileage, to be paid by the county, one dollar and fifty cents. Issuing subpœna and seal, twenty-five cents. Swearing and entering appearance of each witness, fifteen cents. Entering judgment on the journal, twenty-five cents. For each ten words after the first one hundred words, one cent. Entering verdict on the journal, twenty-five cents. Transcribing judgment or order on appearance docket, twenty cents. Drawing and issuing venire for grand jury, and impaneling the same, to be paid by the county, one dollar and twenty-five cents. Dismissal, discontinuance, or continuance, twenty-five cents. Taxing costs, each cause, thirty-three cents. Making complete record, for each ten words, one cent. Copy of process, pleadings, record, or paper filed, or any part thereof, for every ten words, one cent. Certificate and seal, twenty-five cents. Filing and entering petition for *habeas corpus*, twenty-five cents. Issuing writ of *habeas corpus*, one dollar. Issuing and docketing execution or order of sale, seventy-five cents. Entering return of execution, order of sale, or order of attachment, for each ten words, one cent. Indexing execution, or order of sale, direct and reverse, each docket, ten cents. Taking acknowledgment of deed or other instrument, fifty cents. Taking affidavit, except those required to pleading, forty-five cents. Each certificate or seal not herein provided for, twenty-five cents. Entering satisfaction of judgment, twenty-five cents. **Every search made by the clerk, where no other service is rendered to which** any fee or fees are attached, fifteen cents. Entering mandate and proceedings of supreme court, twenty-five cents. Entering transcript of judgment of justice of the peace, forty cents. Entering and docketing appeal from judgment of justice of the peace, forty cents. Suggesting death of party or diminution of record, fifteen cents. Substituting party on the record, fifteen cents. Commission to examine witnesses, fifty cents. Entering confirmation of sale, twenty-five cents. Recording declaration of intention to become a citizen of the United States, and certified copy thereof under seal, fifty cents. Recording final admission of alien to the right of citizenship, and certified copy thereof under seal, fifty cents. Filing and entering motion, rule or default, ten cents. Taking recognizance or entering forfeiture of recognizance, twenty-five cents. Arraignment of defendant, twenty-five cents. Entering retraction of plea or *nolle prosequi*, twenty cents. Issuing capias, warrants, or other process under seal in criminal cause, fifty cents. Entering remittitur, fifteen cents. Each clerk of the district and supreme court shall keep a docket in which he shall enter the costs chargeable and taxable against each party in any suit pending in said courts respectively; and he is hereby empowered at any time to make out a statement of such fees, specifying each item of the fees so charged and taxed, under the seal of the court, which fee-bill, so made under seal of said court, shall have the same force and effect as an execution; and the sheriff to whom said fee bill shall be issued shall execute the same as an execution, and shall have the same fees therefor; and the clerk shall have the same fees for issuing such bill that he is entitled to for the issuance of an execution; *Provided*, That the clerk shall not enter in such docket any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

3005. **Register in chancery.**—Docketing each cause, seventy-five cents. Taking affidavit, except those required to pleading, twenty-five cents. Issuing subpœna in chancery, order of injunction, citation, or any mesne process under seal, fifty cents. Filing bill, pleading, or other paper ten cents. Approving bail bond, twenty-five cents. Entering return on subpœna, injunction, citation, or any mesne process, twenty-five cents. Entering each cause on the bar and court calendar, each term, ten cents. Indexing each cause, direct and reverse, each docket, ten cents. Entering decree, fifty cents, and order on the journal, twenty-five cents. And for each ten words after the first one hundred words, one cent. Transcribing decree or order on appearance docket, ten cents. Dismissal, discontinuance, or continuance, twenty-five cents. Taxing costs, each cause forty cents. For making complete record, transcript, or copy of process, pleadings, record, or other paper filed, or any part thereof, for each ten words, one cent. Certificate and seal, twenty-five cents. Entering allowance of injunction, fifty cents. Issuing execution or order of sale, seventy-five cents. Entering return of execution or order of sale, for each ten words, one cent. Entering satisfaction of decree, twenty-five cents. Filing and entering notice of appeal, fifteen cents. Filing and entering motion or rule, fifteen cents. Every search, where no other service is rendered to which any fee or fees are attached, fifteen cents.

3006. **Sheriffs.**—Serving capias with commitment or bail-bond and return, one dollar. For serving search warrant, one dollar. For arresting under search warrant, one dollar for each person so arrested. Serving summons, subpœna in chancery, order of attachment, order of replevin, writ of injunction, *scire facias*, citation, or other writ of mesne process, and return thereof, fifty cents. For each defendant after the first in the same case, twenty-five cents. Copy of summons, subpœna in chancery, order of attachment, twenty-five cents. Serving subpœna for witnesses, each person served, twenty-five cents. Taking and filing replevin, bond, or other indemnification, to be furnished and approved by the sheriff, fifty cents. Making copy of any process, or bond, or paper, other than herein provided for, twenty-five cents. Traveling expenses for each mile actually and necessarily traveled, five cents. Levying writ of execution, and return thereof, one dollar. Levying writ of possession, with the aid of the county, two dollars. Levying writ of possession, without the aid of the county, one dollar. Summoning grand jury, not including mileage, to be paid by the county, five dollars. Summoning petit jury, not including mileage, to be paid by the county, six dollars. Summoning special jury, for each person impaneled, twenty-five cents. Calling jury for trial of cause, twenty-five cents. Serving notice of motion, or other notice, or order of court, fifty cents. Executing writ of *habeas corpus*, and return, one dollar. Serving writ of restitution, and return, one dollar. Calling inquest, to appraise lands and tenements levied on by execution, fifty cents. Calling inquest to appraise goods and chattels taken by order of attachment or replevin, fifty cents. Advertisement of sale in newspaper, in addition to the price of printing, fifty cents. Advertising in writing for sale of real or personal property, one dollar. Executing writ, or order of partition, two dollars. Making deeds for lands sold on execution or order of sale, one dollar. Committing prisoner to prison, fifty cents. Attending before judge, or court, in criminal cases, one dollar. Opening district court and attending thereon, per day, to be paid by the county, two dollars. Commission on all money received and disbursed by him on execution, or order of sale, order of attachment, decree, or on sale of real or personal property, shall be for each dollar not exceeding four hundred dollars, three cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, two cents; for every dollar above one thousand dollars, one cent; *Provided*, That in all cases where no money is received or disbursed by him, no percentage shall be allowed. For executing death warrant, such fee as the county commissioners shall deem reasonable and just, to be paid by the county. For guarding prisoners, when it is actually necessary, two dollars per day, to be paid by the county. Where there are prisoners confined in the county jail, one dollar and fifty cents per day shall be allowed the sheriff as jailer. For boarding prisoners per day, not exceeding seventy-five cents per day, nor more than three and one-half dollars per week, when the prisoners are confined more than six days.

See sec. 3043, *post*. Amended 1877, p. 40. Compensation for keeping persons to be fixed by county commissioners, not exceeding seventy-five cents per day. 8, 38; 5, 39.

3007. For performing the **duties** required by law to be performed by them **in** the **county court,** sheriffs shall receive the same fees as are allowed for similar service in the district court, except for attendance on the county court, to be taxed against the proper party or parties by the county judge.

Amended 1877, p. 42.

Secs. 3008 and 3009. "An act prescribing **fees for sheriffs** in cases of execution and attachments." 1871, p. 116. In force March 28.

3008. In all cases where writs of attachment against property are issued, the officers to whom such writ is directed for service shall be empowered to demand **in advance,** and receive before said service, the regular fees for service of papers, and in addition thereto a sum of money sufficient to defray the expenses incurred for work and labor in the taking possession of or removal of the property ordered attached, and for the safe keeping thereof; said sum to be taxed in the costs.

3009. **[Same.]**—In all cases of attachment, when the property ordered attached consists of merchandise or miscellaneous goods, and time is absolutely necessary to properly appraise the same as required by law, the **residents** of the county, **sum-**

moned to appraise said property, shall be entitled to a just and fair **compensation** for their time and labor and mileage, when necessary to go any distance exceeding one mile; and the sheriff or other officer is empowered to demand and collect the same as other fees.

Sec. 3010. "An act to provide for paying **officers** for **services** rendered **in case of felony.**" 1871, p. 133. In force March 27.

3010. **[Fees in criminal cases.]**—That the **board** of county commissioners of the several counties in this state are hereby authorized to **audit** and allow the **fees** that may be fixed by law for services that may hereafter be performed by justices of the peace, constables, and sheriffs in their respective counties, in the arrest and examination of offenders charged with felony or misdemeanor.

The words "or misdemeanor" are unconstitutional and are to be rejected. 10, 299 (4 N. W., 984).

3011. **Coroner.**—For viewing a dead body, ten dollars. Summoning and qualifying an inquest, fifty cents. Drawing and returning inquisition, for each ten words, one cent. For physician making *post mortem* examination of dead body, not less than ten dollars each, and in cases requiring careful and difficult dissection, or an analysis of poison, not to exceed in any case fifty dollars, to be paid out of any goods, chattels, lands and tenements of the slayer (in case of murder or manslaughter), if he hath any, otherwise by the county, with mileage or distance actually traveled to and from the place of viewing the dead body. For all other services rendered, the same fees as are allowed the sheriff, and mileage.

Amended 1869, p. 166.

3012. The **county judge,** for any service performed by him, in any matter within the jurisdiction of a justice of the peace, shall be allowed the same fees as are allowed by law to justices of the peace for like services, and in all civil actions triable in the county court of which a justice of the peace has not jurisdiction, the county judge shall be entitled to receive the following fees: Docketing each cause, twenty-five cents; issuing summons or other writ under seal, fifty cents; entering appearance of parties, fifteen cents; taking affidavit, twenty-five cents; filing petition, answer, or any other pleading or paper necessary in any case, ten cents; for copying or entering in full on the docket, the petition, answer, or any other pleading necessary in any case, one cent for each ten words thereof; taking and approving bond or undertaking, twenty-five cents; recording bond, for every ten words, one cent; administering oath or affirmation to witness, ten cents; for entering cause on calendar and setting same for trial, twenty-five cents; certificate and seal, twenty-five cents; issuing execution and entering return, seventy-five cents; filing and entering motion, fifteen cents; issuing subpœna and seal, fifty cents; commission on money collected on judgment without execution shall be one per cent on the first two hundred dollars ($200), one-half of one per cent on all amounts over two hundred ($200) and under five hundred ($500) dollars, and one-fourth of one per cent on all amounts over five hundred ($500) and under one thousand dollars ($1,000); issuing order of sale, fifty cents; copy of appeal, or copy of pleadings, or other papers for any purpose, for each ten words, one cent; for each day's attendance upon a cause, after the first day, one dollar; entering judgment, fifty cents; for each adjournment, fifty cents; for each dismissal, discontinuance, or satisfaction, twenty-five cents; entering voluntary appearance of defendant, twenty-five cents; issuing marriage license, administering oath when necessary therein, and recording certificate, one dollar and fifty cents; and in matters of probate the county judge shall be entitled to receive the following fees: For receiving, filing and recording petition for any purpose, fifty cents; taking affidavit, twenty-five cents; issuing citation or notice under seal, fifty cents; order for day of hearing application, fifty cents; probate of will and entry thereof, two dollars; taking and approving bond, twenty-five cents; recording bond or will, for every ten words, one cent; letters testamentary or of administration or guardianship, under seal, and recording the same, two dollars; for copy of bond, will, sale bill, inventory, settlement, pleading, or other paper, for every ten words, one cent; making and recording order or decree, when the same does not exceed one hundred words, fifty cents; for every ten words after the first hundred, one cent; for copy of order or decree under seal, for the first hundred words, fifty cents; for every ten words after the first hundred, one cent; filing an account and vouchers of executor, administrator, or guardian, for settlement, and entering the same on minutes of the court, fifty cents; examining a partial or final settlement of executor, administrator, or guardian, when the vouchers do not exceed fifty, one dollar; every additional voucher over fifty, two cents; making appointment of and issuing commission to commissioners or appraisers, fifty cents; filing and recording report of commissioners or appraisers, or of the proceedings and judgment of the district court on appeal from the decision of the commissioners, fifty cents; for every additional ten words after the first hundred words, one cent; recording report of commissioners to make partition, for the first hundred words, seventy-five cents; for every ten words after the first hundred, one cent; for filing and recording inventory or sale bill reported by executor, administrator, or guardian, fifty cents; for every additional ten words after the first hundred, one cent; for filing and approving or rejecting a claim against an estate, and entering the same on claim register, ten cents; administering oath or affirmation to witness, ten cents; certificate and seal, twenty-five cents; for attendance each day upon a cause pending in probate court, one dollar. The price of printing notices required by law to be printed in some newspaper shall be allowed in addition to the fees herein allowed.

See sec. 3043, *post.* Amended 1887, p. 458.

3013. **Master in chancery.**—For copying any paper or instrument in writing, for taking testimony, for every ten words, one cent. Swearing each witness, ten cents. Making reports of facts or conclusions in law, or upon exceptions, for every ten words, one cent. And such additional fee as the court shall allow, not exceeding, in any one cause, the sum of ten dollars. Certificate and seal, twenty-five cents. Taking affidavit, twenty-five cents. Advertisement of the sale of property in newspaper, in addition to the price of printing, sixty cents. For maksale, one dollar. Report of sale, one dollar. Making deed for land sold on decree or order of sale, in addition to the price of revenue stamp, two dollars. Commission on the amount of purchase money received and disbursed by him of all the property contained in each decree or order of sale shall be, for each dollar not exceeding three hundred dollars, two cents. For each dollar above three hundred and not exceeding one thousand dollars, one cent. For every dollar above one thousand dollars, one-half cent. In all cases in the district or supreme court, when persons in whose favor the execution or order of sale is issued, shall bid in the property sold on exceution or decree, the sheriff or master making such sale shall receive five dollars as his per cent on such sale, and no more.

3014. **Justice of the peace.**—Docketing each cause, twenty-five cents. Taking affidavit, twenty-five cents. Filing petition, bill of particulars, or other paper necessary in a cause, ten cents. Issuing summons, capias, subpœna, order of arrest, or venire for jury, fifty cents. Issuing execution, order of sale, order of attachment, order of replevin, and entering return therein, fifty cents. Issuing writ of restitution, and entering return therein, one dollar. Administering oath or affirmation to witness, ten cents. Entering judgment in any cause, fifty cents. Taking acknowledgment of deed or other instrument, fifty cents. Swearing jury, twenty-five cents. Copy of appeal, certiorari, or copy of pleadings, or other papers for any purpose, for each ten words, one cent. Taking depositions, for each ten words, one cent. Certificate and seal, twenty-five cents. Issuing warrant or mittimus, one dollar. Taking information or complaint, fifty cents. Discharge to jailer, twenty-five cents. Dismissal, discontinuance, or satisfaction, twenty-five cents. Written notice to party or parties, ten cents. Filing notice and opening judgment for rehearing, thirty cents. Each adjournment, fifty cents. Performing marriage ceremony, three dollars. Each day's attendance upon trial of a cause, after the first day, one dollar. Taking and approving bail bond, twenty-five cents. Entering voluntary appearance of defendant, twenty-five cents. Issuing attachment, fifty cents. Entering motion or rule, ten cents. Rule of reference to arbitrators, fifty cents. Entering award of arbitrator, twenty-five cents. Commission on money collected on judgment without execution shall be one per cent on the amount.

Commission on money paid without execution to be paid by judgment debtor. **21,** 478 (32 N. W., 302).

3015. **Constables.**—Constables shall be allowed the same fees as are allowed to sheriffs for like services.

3016. **County clerk.**—Issuing certificate of election, twenty-five cents. For performing the duties of clerk to the county commissioners, and attending to the business of the county, such salary per annum, to be paid by the county quarterly, as the commissioners of the county shall allow, not exceeding in any year the sum of four hundred dollars. For each certificate and seal in other cases, twenty-five cents. For recording each certificate of marriage, twenty-five cents.

See sec. 3043, *post.*

Secs. 3017 and 3018. "An act regulating the fees of county clerks," etc. 1887, p. 461. In force July 1.

3017. That in all counties the **county clerk** shall receive for recording deed, mortgage, or other instrument, for the first two hundred (200) words, seventy-five (75) cents, and for each ten (10) words thereafter, one (1) cent; copying of record for each ten (10) words, one (1) cent; certificate and seal, twenty-five (25) cents; entering satisfaction of mortgage or lien, twenty-five (25) cents; for preparing tax list, four (4) cents per line, including footings and recapitulations; *Provided,* That no fee shall be paid the county clerk in counties having seventy thousand (70,000) inhabitants and upwards for making said list.

Fee of county clerk for completing tax list was fixed at four cents for each tract or lot by statute of February 9, 1877. **10,** 382 (6 N. W., 463). Fees for making tax list need not be entered on fee book. **25,** 625 (41 N. W., 553). Clerk not entitled to fees for preparing duplicate tax list. **29,** 114-16 (45 N. W., 275).

3018. All **fees** to be **entered** on the fee book and accounted for.

Exception in case of fees for tax list omitted. 1891, p. 262. Mandamus lies after expiration of clerk's term to compel him to refund all fees in excess of amount allowed by law. **29,** 480 (45 N. W., 784).

Secs. 3019 and 3020. "An act to provide for the compensation of county clerks for compiling numerical index from the record in their offices in counties in which there had been no numerical index prior to September 1, 1879. 1881, p. 221. In force March 2.

3019. County clerks for **compiling** the **transfers** from the records of their office shall receive for each transfer the sum of fifteen cents, or such other sum—not exceeding fifteen cents—as the county commissioners and the county clerk may agree upon, to be paid by the county.

3020. For entering each instrument presented for record in the **numerical index** after the completion of said index the clerk shall receive the sum of fifteen cents, to be paid in advance by the person offering the instrument for record.

3021. **County surveyors.**—For surveying all lands, except town lots, per day, four dollars. For each lot laid out and platted in any city or town, one dollar. For each copy of plat and certificate, fifty cents. Recording each survey, twenty-five cents. For each mile actually and necessarily traveled in going to and from work, ten cents. For establishing each corner, twenty-five cents. For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars. For surveying county roads, per day, five dollars. Expenses of necessary assistance shall, in addition, be paid by the party or parties requiring the work to be done.

Amended 1869, p. 157.

3022. **Printers.**—For printing and publishing legal advertisements in newspapers, as follows: Each square of ten lines, for the first insertion, one dollar. Each subsequent insertion, for each square of ten lines, fifty cents. Each legal advertisement under ten lines shall be deemed a square, and each fractional part of a square shall be counted as a full square. For publishing list of lands upon which taxes are delinquent, each description twenty cents. For publishing list of town lots upon which taxes are delinquent, each description ten cents; *Provided*, That the county commissioners of Otoe county have control of printing the delinquent tax list in said county.

Amended 1869, p. 159.

3023. **Interpreters** or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be taxed and collected as other costs, but the same shall not exceed two dollars per day.

3024. **Notaries public.**—For each protest, ($1) one dollar; for recording the same, (50c.) fifty cents; for each notice of protest, (25c.) twenty-five cents; for taking affidavit and seal, (25c.) twenty-five cents; for administering oath or affirmation, (10c.) ten cents; for taking deposition, each ten words, (2c.) two cents; for each certificate and seal, (25c.) twenty-five cents; for taking acknowledgment of deed or other instrument, (50c.) fifty cents; for each mile traveled in serving notice, (5c.) five cents.

Amended 1875, p. 84.

3025. Each **county treasurer** shall receive for his services the following fees: On all moneys collected by him for each fiscal year, under three thousand dollars, ten per cent. For all sums over three thousand dollars and under five thousand dollars, four per cent. On all sums over five thousand dollars, two per cent. On all sums collected, percentage shall be allowed but once; and in computing the amount collected for the purpose of charging percentage, all sums from whatever fund derived, shall be included together, except the school fund. For going to the seat of government to settle with the state treasurer, and returning therefrom, a traveling fee of ten cents per mile, to be paid out of the state treasury. The treasurer shall be paid in the same *pro rata* from respective funds collected by him whether the same be in money, state or county warrants. On school moneys by him collected, he shall receive a commission of but one per cent, and in all cases where persons outside of the state apply to the treasurer by letter to pay taxes, the treasurer is authorized to charge a fee of one dollar for each tax receipt by him sent to such person.

See *post* sec. 3043. Amended 1891, p. 263.

3026. **Assessor.**—Each assessor shall receive for his services the following fees, and no more: for each and every day actually engaged, the sum of three dollars.

3027. **County commissioners.**—County commissioners shall each be allowed for the time they shall be necessarily employed in the duties of that office the sum of three (3) dollars per day and five (5) cents per mile, to be paid out of the general county fund; *Provided, however*, That in counties having over seventy thousand (70,000) inhabitants, county commissioners shall each be allowed a salary of eighteen hundred (1,800) dollars per annum as compensation for their services.

Amended 1887, p. 462.

3028. There shall be paid by the party against whom a verdict is rendered, in the district court, a **jury fee** of five dollars, to be taxed in the bill of costs, and when collected to be paid into the county treasury; and for each trial by the court a fee of one dollar, to be taxed, collected, and paid in a like manner, for the use of the county.

3029. In each **criminal** case tried by a **jury**, upon a conviction of the defendant or defendants, there shall be taxed in the bill of costs a **fee** of six dollar as a jury fee, and judgment therefor shall be rendered against such defendant or defendants, which sum, when collected, shall be paid into the county treasury, for the use of the county.

This is constitutional. **17**, 334 (22 N.W., 772).

3030. In all **actions**, motions, and proceedings in the supreme, district, or justice's courts, the **costs** of the parties shall be **taxed** and entered on the record separately.

See **22**, 171 (34 N.W., 349).

3031. The clerks of thesupreme court and of each district court, the register in chancery, probate judge, sheriff, justice of the peace, constable, or register of deeds may in all cases require the party for whom any service is to be rendered to pay the **fees in advance** of the rendition of such service, or give security for the same to be approved by the officer.

Plaintiff, as also defendant, is primarily liable for his own costs and each may be required to secure his costs in advance. **12**, 244 (11 N.W., 320). Constable cannot demand fee in advance for summoning jurors. **27**, 400 (43 N. W., 177).

3032. It shall be lawful for any person to refuse payment of fees to any officer who will not make out a **bill of particulars**, signed by him, if required, and also a receipt or discharge signed by him for fees paid.

3033. No sheriff, coroner, or constable shall be entitled to receive on mesne or final process any fees provided for in this chapter, unless he shall return upon the process, upon which any charge shall be made, the particular **items** of such charge.

This applies to a charge for care and custody of property. **25**, 65 (40 N. W., 591).

3034. If any **officer** whatever, whose fees are hereinbefore expressed and limited, shall take **greater fees** than are so hereinbefore limited and expressed, for any service to be done by him in his office, or if any such officer shall charge or demand, and take any of the fees hereinbefore ascertained and limited, where the business for such fees are chargeable shall not be actually done and performed, such officer shall **forfeit** and pay to the party injured fifty dollars, to be recovered as debts of the same amount are recoverable by law.

Mistake or ignorance without corrupt intent is no defense. **11**, 160 (8 N. W., 386). Will not be extended or enlarged by the courts. Several transcripts paid for in one sum held to support but one cause of action for one penalty. **28**, 251 (44 N. W., 111). County courts have no jurisdiction under this section. **19**, 528 (26 N. W., 251). Constitutional. **9**, 184 (2 N. W., 455).

3035. All officers whose fees are by this chapter determined are hereby required to make fair **tables of** their respective **fees**, and keep the same in their respective offices in some conspicuous place, for the inspection of all persons who shall have business in said offices; and if any such officer shall **neglect to keep** a table of fees in his office as aforesaid, such officer shall, for each day of such neglect so to keep a table of fees of his office, forfeit and pay the sum of five dollars, to be recovered by action at law, before any justice of the peace, for the use of the county in which the offense shall have been committed.

3036. It shall be the duty of the **district court**, at each term of court, to appoint a competent number of **bailiffs** to wait on the grand jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county.

Bailiff, merely as such, has no authority to serve process. 11, 223 (9 N. W., 52).

3037. All officers whose fees are hereinbefore limited, and expenses are allowed, may charge and demand as hereinbefore allowed the price of all United States **revenue stamps** required to be used in the discharge of their official duties, and the same shall be taxed with costs, as in other cases of fees.

3038. Every **officer** whose salary is in the nature of a **per diem** shall, before drawing any money on account of such salary, subscribe an **oath** or affirmation in the following form: "I, A. B., do solemnly swear (or affirm), that I have been ——— days necessarily and diligently engaged in the duties of my office as (*insert title of officer*). (*Officer's name.*) Attest by ———." Any disbursing officer of this state who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is subscribed shall forfeit to this state the sum of fifty dollars, which forfeiture may be sued for by any taxpayer.

Secs. 3039 to 3042. "An act to prescribe the fees of certain officers." 1867, p. 89. In force July 4.

3039. The **judges** and **clerks** of **election**, also the board of canvassers of the county, at all general elections, shall receive the following pay: For each day's service each person shall receive two dollars. The person making the return of the election to the county clerk shall receive the additional sum of five cents for each mile necessarily traveled; *Provided*, That in cities of the first class judges and clerks of election shall each receive the sum of six dollars for each election held in said city.

Amended 1883, p. 228.

3040. Grand and petit **jurors** shall receive for their services two dollars for each day employed in the discharge of their duties, and mileage at the rate of five cents for each mile necessarily traveled.

3041. **Witnesses** before the district court and grand jury shall receive two dollars for each day actually employed in attendance on the court or grand jury, and if the said witness shall reside more than one mile from the court house or place where the court is held, five cents for each mile necessarily traveled.

Witness fees of state's witnesses are to be taxed against defendant in a criminal case, on conviction, when subpœnaed from another state. 19, 696 (28 N. W., 300). All collections for whatever fund (except school) must be aggregated, and the commission allowed but once; county board cannot change this commission. 25, 632 (41 N. W., 404).

3042. **Witnesses and jurors** before a justice of the peace or probate court shall receive for each day's attendance one dollar, and mileage at the rate of five cents for each mile necessarily traveled.

Secs. 3043 to 3047. "An act to **regulate** the **fees** of **county judges**, county clerks, **sheriff**, and county **treasurers**. 1887, p. 215. In force January 1, 1878.

3043. That every county judge, county clerk, county treasurer, and sheriff of each county, whose **fees** shall in the aggregate **exceed** the sum of fifteen hundred dollars ($1,500) each for the county judge and county clerk, and two thousand dollars ($2,000) each for sheriffs and county treasurer per annum, shall **pay** such **excess into** the **treasury** of the county in which they hold their respective offices; *Provided, however*, that in counties having over 25,000 inhabitants the county treasurer shall receive the sum of three thousand dollars ($3,000) per annum, and shall be furnished by the county commissioners the necessary clerks or assistants, whose combined salary shall not exceed the sum of two thousand four hundred dollars ($2,400) per annum. The sheriff shall receive the sum of two thousand five hundred dollars ($2,500) per annum, also the necessary jail guard and one deputy, and the salary of such deputy shall be nine hundred dollars ($900) per annum. The county clerks of such counties shall receive the sum of two thousand five hundred dollars ($2,500) per annum, and he shall have one deputy, whose salary shall be one thousand dollars ($1,000) per annum. The county judges of such counties shall receive the fees of such office, not to exceed the sum of two thousand dollars ($2,000) per annum, and shall be provided by the county commissioners with the necessary clerks or assistants, whose combined salaries shall not exceed the sum of one thousand dollars ($1,000) per annum; *And provided further*, That if the duties of any of the officers above named in any county of this state shall be such as to require one or more assistants or deputies, then such officers may retain an amount necessary to pay for such assistants or deputies not exceeding the sum of seven hundred dollars ($700) per year for each of such deputies or assistants, except in counties having over seventy thousand (70,000) inhabitants in which case such officer may retain such amount as may be necessary to pay the salaries of such deputies or assistants as the same shall be fixed by the board; but in no instance shall such officers receive more than the fees by them respectively and actually collected, nor shall any money be retained for deputy service unless the same be actually paid to such deputy for his services; *And provided further*, That neither of the officers above named shall have any deputy or assistants unless the board of county commissioners shall, upon application, have found the same to be necessary, and the board of county commissioners shall in all cases prescribe the number of deputies or assistants, the time for which they may be employed, and the compensation they are to receive.

Amended 1885, p. 253; 1887, p. 463. Commissioners may require fees over a certain amount to be paid into county treasury. **16,** 681 (21 N. W., 398). The county clerk need not enter on fee book compensations for making tax list. **25,** 625 (41 N. W., 553). Clerks must report fees for abstrcts and search of records. **23,** 454 (36 N. W., 756). See **9,** 89 (2 N. W., 215).

3044. Each of the officers named in section one of this act shall on the first Tuesday of January, April, July, and October of each year make a report to the board of county commissioners under oath showing the different items of fees received, from whom, at what time, and for what service, and the total amount of fees received by such officer since the last report, and also the amount received for the current year.

Clerk need not include fees for tax list. **25,** 624 (41 N. W., 553). That the defendant is no longer an officer is no defense; mandamus to make him report. **25,** 342 (41 N. W., 245).

3045. Each of the officers named in section one of this act shall keep a book, which shall be provided by the county, and which shall be known as the fee book, and shall be a part of the records of such office, and in which shall be entered each and every item of fees collected, showing in separate columns the name of the party from whom received, the time of receiving the same, the amount received, and for what service the same was charged.

3046. Any of the officers named in section one of this act who shall omit to comply with the provisions of this act, or shall fail or neglect to keep a correct account of the fees by him received, or shall fail and neglect to make a report to the board of county commissioners as herein provided, or shall willfully or intentionally omit to charge the fees provided by law, with intent to evade the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall for each offense be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars; and any officer named in this act who shall make a false report under oath shall be guilty of perjury, and punished accordingly.

3047. All **fees** paid into the treasury of any county under the provision of this act shall be **applied to** the **general fund** of such county and shall be distributed as provided by law.

III. PUBLIC RECORDS.

Sec. 3048 formed ch. 44, R. S. 1866, p. 297, entitled "Records."

3048. All citizens of this state, and all other persons interested in the **examination** of the public records, are hereby fully empowered and authorized to examine the same, free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Fee book of district court clerk is a public record. 19, 1071 (26 N. W., 620). So is numerical index, 17, 175 (22 N. W., 353); and stenographer's report of trial, 19, 347 (27 N. W., 224).

IV. STATE EXECUTIVE OFFICERS.

For State Superintendent, see Public Instruction, p. 775.

Secs. 3049 to 3053. "An act prescribing and defining the powers and duties of the governor of the state." 1867, p. 100. In force June 24. (Sections 4 and 5 superseded by sections 10, 11, and 13, art. V, Const.)

3049. The governor is hereby constituted the legal **custodian of** all the **property** of the state, not specially entrusted to other officers by law; and he is hereby authorized and empowered to take summary possession of such property of the state, without any process of law, and to adopt such measures as he may deem proper to preserve it from injury or deterioration.

3050. It shall be the duty of the several **officers** of the executive department to make a written **report to** the **governor** of the state of the public business entrusted to their charge, whenever required by him so to do.

3051. All **commissions** to civil officers in this state shall be issued and signed by the governor, and countersigned by the secretary of state, and a record thereof kept in the office of the secretary of state.

3052. The governor shall by **proclamation** set apart one day in each year as a day **of** solemn and public **thanksgiving** to Almighty God for his blessings to us as a state and a nation, and no business shall be transacted on that day at any departments of state.

3053. The governor shall appoint a **private secretary** to serve during the continuance of his term of office, who shall receive a salary of fifteen hundred dollars per annum, payable in the same manner as the salaries of state officers.

The general appropriation bills of 1889, p. 613, allow $1,700; of 1891, p. 440, allow $2,000.

Secs. 3054 to 3059. "An act to provide for the election of an attorney general for the state of Nebraska and to prescribe his duties and fix his compensation." 1869, p. 184. In force February 15. (Secs. 1 and 2, and 9 to 12, being either of temporary application or superseded by later provisions, are omitted.)

3054. The attorney general shall **appear for** the **state,** and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court, in which the state shall be interested or a party, and shall also, when requested by the governor, or either branch of the legislature, appear for the state and prosecute and defend in any other court, or before any officer, any cause or matter, civil or criminal, in which the state may be a party, or interested.

Amended 1873, G. S., p. 1018. Board of transportation cannot control action of attorney general. 22, 318 (35 N. W., 118).

3055. The attorney general may, on his own motion, or whenever thereunto requested by any officer of the executive department, having charge of any official bond, contract, or matter, shall, upon a breach thereof, **prosecute** any **official bond** deposited in any office of the executive department, or any contract in which the state is interested, and may, and when so requested shall, bring, prosecute, and defend for the state any suit, matter, or thing, civil or criminal, in which the state is interested, or relating to any matter connected with the executive department.

Rewritten 1873, p. 1019.

3056. The attorney general shall consult with and advise the district attorneys, when requested by them, in all matters pertaining to the duties of their office; and he shall have authority to require their aid and assistance in all matters pertaining to his duties in their respective districts, and may, in any case brought to the supreme court from their respective districts, demand and receive the assistance of the district attorney from whose district such case is brought. He shall also, when required, give his **opinion** in writing, without fee, upon all questions of law submitted to him by the legislature, or either branch thereof, or by the governor, secretary of state, treasurer or auditor.

3057. Whenever requested by the governor, secretary of state, treasurer, or auditor, he shall **prepare** proper **drafts** for contracts, forms, and other writings which may be wanted for the use of the state; and he shall **report to the legislature** or either branch thereof, whenever requested, upon any business pertaining to the duties of his office.

3058. All **moneys** received by the attorney general, belonging to the people of the state, shall be immediately, upon the receipt thereof, **paid** by him **into** the state **treasury.**

3059. He shall keep in proper books, provided for that purpose at the expense of the state, a **register of** all **actions** and demands prosecuted or defended by him in behalf of this state, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office.

Sec. 3060. "An act to provide for the appointment of a **deputy attorney general.**" 1887, p. 629. In force July 1.

3060. That the **attorney general** of Nebraska shall have power to appoint a **deputy** attorney general, who shall give bond to the state of Nebraska, in the sum of twenty-five thousand dollars, with good and sufficient securities, to be approved by the governor, which bond, together with a copy of his appointment, shall be deposited in the office of the secretary of state. And the said deputy may do and perform, in the absence of the attorney general, all the acts and duties that may be authorized and required to be performed by the attorney general. And the attorney general shall be responsible for all the acts of his deputy.

This section held legal and valid. **25**, 670 (41 N. W., 643).

AUDITOR.

Secs. 3061 to 3075 formed secs. 1 to 16, except sec. 12, ch. 4, R. S. 1866, p. 19.

3061. The auditor shall **reside** and keep his **office** at the seat of government.

Original chapter read territorial auditor and school commissioners; abrogated by constitution.

3062. The auditor is declared to be the **general accountant of the state**, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the state, and its revenue, debt, and fiscal affairs, not required by law to be placed in some other office, or kept by some other officer or person.

3063. It shall be the duty of the **auditor** to digest, prepare, and **report** to the governor of the state, at least twenty days before the commencement of each regular session of the legislative assembly: *First*—A full and detailed statement of the condition of the treasury, and the amount of the expenditures for the last fiscal year. *Second*—A full and detailed statement of the public debt, showing fully all liabilities and resources of the state. *Third*—Estimates of the revenue and expenditures for the next succeeding year. *Fourth*—Such plans as he may deem expedient for the support of public credit, for lessening the public expenses, for using the public money to the best advantage, for promoting frugality and economy in public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the state, and for securing uniformity and efficiency in the levying and collection of taxes, and systematizing the work to be done by officers having duties to perform under the revenue law. *Fifth*—A tabular statement showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended. *Sixth*—A tabular statement showing separately the amount of money received into the state treasury from all sources in the preceding fiscal year, the amount received from each county, and for what years paid, the amount of penalties and interest reported collected on delinquent taxes, and the balance due from each county on account of taxes for each year for which such balances may be due. *Seventh*—A tabular statement showing the whole number of acres of land and value, total value of town lots, and the whole number and value of each item of taxable property returned by the several assessors and county clerks to the state board of equalization.

3064. It shall be the duty of the auditor—*First*—To audit, adjust, and settle all claims for services rendered, or expenditures made for the benefit of the state, provided such services are rendered or expenditures made by authority of law, except only such claims as may be expressly required by law to be audited and settled by other officers or persons. *Second*—To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided for by law, and all warrants so drawn shall bear upon their face a reference to the law authorizing the drawing of the same, naming the fund out of which it shall be paid, and shall be countersigned by the state treasurer before it is delivered to the party in whose favor it is drawn. *Third*—To audit, settle, and adjust the accounts of all collectors of the state revenues, and other holders of public money who are required by law to pay the same into the state treasury. *Fourth*—Whenever it is ascertained that by mistake, or otherwise, any county treasurer, or other person, has paid into the treasury any sum of money not due the state, the auditor shall, on the state treasurer's certificate that such sum has been paid to him, and that it was not due the state, refund to such county treasurer or other person the amount so paid, by drawing a warrant therefor upon the state treasury. *Fifth*—To keep an account between the state and state treasurer, charging him with all amounts by him received, and giving him credit for all sums by him paid on account of indebtedness, redeemed or otherwise, in accordance with law. *Sixth*—To keep an account of all debts and credits between the state and the several states, and the United States, and with each county in the state. *Seventh*—To direct prosecutions in the name of the state for all official delinquencies, in relation to the assessment, collection, and payment of the revenue, against all persons who by any means become possessed of public money or property due or belonging to the state, and fail to pay or deliver the same, and against all debtors of the state. *Eighth*—To procure from the proper officers an abstract and description of all lands within the state not yet procured, and annually hereafter, abstracts and descriptions of such lands as shall become taxable, the expense of all which shall be paid out of the state treasury, and which lists the auditor shall transmit to the clerks of the counties in which such lands may be situated. *Ninth*—To give information in writing to either house of the legislative assembly, whenever required, upon any subject relating to the fiscal affairs of the state, or in regard to any duty of his office. *Tenth*—To furnish offices for himself and the state treasurer, and all fuel, lights, books, blanks, forms. paper, and stationery required for the proper discharge of the duties of their offices, and also such books, blanks, etc., as may be necessary for the use of the county clerks, treasurers, assessors, or other officers having duties to perform under the revenue law, which shall be sent, upon the requisition of the county commissioners, to the clerks of the proper counties, for distribution to the several officers; the expense of all which shall be paid out of the state treasury.

3065. All **county treasurers**, or other persons who are by law required to make **settlements** or pay money into the state treasury at certain specified times, shall, on or before such date, exhibit their accounts and vouchers to the state auditor, who shall, as soon as practicable, examine, adjust, and settle such accounts, and report to the state treasurer the balance found due the state, and if any county treasurer or other person so required by law to pay funds into the state treasury shall fail to make the settlement herein required at the proper time, or to pay the amount so found due to the state treasurer, and produce his receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the state all collection fees and mileage allowed by law, and also a penalty of ten per cent on the amount wrongfully withheld, and interest on the whole at the rate of fifteen per cent per annum from the time the same should have been paid until actual payment, and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise, according to law.

3066. All persons having **claims against** the **state** shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled, and allowed within two years after such claims shall accrue; and in all suits brought in behalf of the state, no debt or claim shall be allowed against the state as a set-off, but such as has been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court that the defendant at the time of trial is in possession of vouchers which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor, by absence from the state, sickness, or unavoidable accident; *Provided,* The auditor shall in no case audit a claim or set-off which is not provided by law.

3067. The **auditor,** whenever he may think it necessary to the proper settlement of any account, may **examine** the parties, **witnesses,** or others, on oath or affirmation, touching any matter material to be known in the settlement of such account.

3068. All **accounts,** vouchers, and documents, settled or to be settled by the auditor, shall be **preserved** in his office, and **copies** thereof, authenticated by his official seal, shall be given to any person interested therein who shall require the same, on the payment to the auditor of ten cents for every one hundred words in such copies.

3069. In all cases of grants, salaries, pay, and expenses, ascertained and allowed by law, found due to individuals from the state when audited, the auditor shall draw **warrants** upon the treasury for the amount; but in case of claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor, or countersigned or paid by the state treasurer, but all such claims shall be reported to the next legislative assembly, with such recommendation as the auditor may deem just.

3070. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account, or credit, it shall be the duty of the auditor, at the request of said person, to **refer** the same, with the reason for his **decision, to** the **legislative assembly.**

3071. The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all **county treasurers** and other persons holding the public money whose **accounts** remain **unsettled** for six months after they should have been settled according to law, or remain unsettled at the close of the fiscal year, with the reason, if any, therefor.

3072. The **auditor** shall have power to **administer** all **oaths** or **affirmations** required by law, in matters pertaining to the duties of his office, and may do and perform all acts or duties authorized to be performed by notaries public, by the laws of the state, subject, however, to such restrictions as are provided by law for notaries.

3073. All **books**, papers, letters and transactions pertaining to the office of auditor shall be **open to** the **inspection** of a committee of the legislative assembly, or either branch thereof, who shall examine and settle all the auditor's accounts.

3074. The auditor shall have power to appoint a **deputy**, who shall give a bond to the state of Nebraska, with good and sufficient security, in the same sum required of the auditor, which bond shall be approved by the governor and deposited with the secretary of state, and when so appointed the deputy may do and perform, in the absence of the auditor, such acts herein authorized and required of the auditor, as the auditor may authorize him to do, subject to the same restrictions; *Provided, however*, That the state shall not be liable for, or pay any salary to such deputy other than the salary provided for the auditor for his services, unless allowed by the legislative assembly.

3075. The auditor shall keep a **seal** of office for the authentication of all papers, writings, and documents required to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received in evidence as the original.

Secs. 3076 to 3079. "An act defining the duties of the **commissioner of public lands and buildings.**" 1877, p. 172. In force February 19. (Section 1 repealed 1881, p. 102.)

3076. The said commissioner shall appoint a **deputy**, who shall attend at the office of said commissioner, from whom he shall require a bond not less than ten thousand dollars, and who shall, in the absence of said commissioner, perform all acts devolving upon him by law.

3077. The said commissioner shall procure a **seal** with proper devices and the words "Nebraska State Land Office" engraved thereon, which seal shall be used by him officially in all matters pertaining to his office wherein a seal is required.

3078. The **records** appertaining to all public lands of the state shall be kept in the office of said commissioner at the seat of government.

3079. The commissioner shall perform such **duties** as may be devolved upon him by the boards provided for in section 19 of article V and section 1 of article VIII of the constitution.

Secs. 3080 to 3083. "An act to appoint the commissioner of public lands and buildings of Nebraska a custodian in the state of Nebraska to receive from the surveyor general for the state of Nebraska, or other authorities of the United States, all field notes, maps, charts, records, and all other papers appertaining to the land titles within the state of Nebraska, including all surveys made under and by the authority of the United States of all lands within the state of Nebraska, and to authorize and require such custodian to receive the same and provide for their safe keeping and care." 1889, p. 567. In force March 2.

3080. That the commissioner of public lands and buildings of Nebraska be and he is hereby made, appointed, and constituted as a **custodian** within and for the said state of Nebraska to receive from the surveyor general of the United States for the state of Nebraska, or from any other authorized officer or agent of the United States having the care, custody, and keeping **of** the same, all the **field notes,** maps, charts, records, and all other papers appertaining or in any manner connected to or with the land titles within the state of Nebraska, including all surveys of lands within the state made under or by authority of the United States.

3081. That the commissioner of public lands and buildings of the state of Nebraska be and he is hereby authorized, empowered, and required as such custodian to receive from the surveyor general of the United States, or from any authorized agent or officer of the United States having the care and custody of the same, all field notes, maps, charts, records, and all other papers appertaining in any manner to the titles of lands within the state of Nebraska, including all surveys of lands within the state of Nebraska made under authority of the United States.

3082. The commissioner of public lands and buildings of the state of Nebraska as such custodian shall provide for and safely keep in his office all the surveys, field notes, maps, charts, records, and all other papers mentioned in section one of this act, the same as other public records are kept in his office.

3083. That the commissioner of the general land office or any surveyor general or deputy surveyor general or any agent or authority of the United States, or any county surveyor of the state of Nebraska, shall at all times have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in this act; the reception and safe keeping of which is herein provided for, and which shall be received from the United States under the authority of any act of the congress of the United States.

SECRETARY OF STATE.

Secs. 3084 to 3090. "An act to define the duties of the secretary of state." 1877, p. 195. In force June 1.

3084. All public acts, laws, and resolutions passed by the legislature of the state shall be carefully deposited in the office of the secretary of state, and the secretary of state is charged with the safe keeping of said office and all laws, acts, resolutions, bonds, papers, and records which now are or shall hereafter be deposited therein. He shall not permit any original rolls, papers, or public documents filed in his office to be taken out of it unless called for by a resolution of either or both houses of the legislature, or for the examination by the executive.

3085. The secretary of the senate and the clerk of the house of representatives, at the close of each session of the legislature, shall deliver to the secretary of state all books, bills, documents, and papers in the possession of either branch of the legislature, correctly labeled, folded, and classified, according to the subject-matter of such documents, respectively; and the secretary of state is hereby required to preserve the same in his office.

3086. There shall be paid to the secretary of state the following fees: For a certificate without seal, fifty cents. For each commission to any officer or other person, except military commissions, one dollar. For copies of exemplification of records, with seal, for each one hundred words, ten (10) cents. For copies of bills or other papers, with certificate under seal, for each one hundred words, ten cents. For receiving and filing articles of association, corporations, or consolidations, bonds, oath of office, each, one dollar. For recording the same, for each one hundred words, ten cents. For issuing each license, one dollar. For taking acknowledgment of a deed, mortgage, power of attorney, or other writing with certificate under seal, fifty cents. For administering oath to an affiant, fifty cents.

3087. It shall be the duty of the secretary of state: *First*—To countersign and affix the seal of the state to all commissions required by law to be issued by the governor. *Second*—To keep a register of all such commissions, specifying the person to whom granted, the office conferred, the date of signing the commission, and when bond is taken, the date and amount thereof, and the names of the sureties. *Third*—To make and keep proper indexes to the records on all public acts, resolutions, papers, and documents in his office. *Fourth*—To give any person requiring the same, and paying the lawful fees therefor, a copy of any laws, act, resolution, record, or paper in his office, and attach thereto his certificate under the seal of the state. *Fifth*—To take charge at the close of each session of legislature of all tables, chairs, desks, and other furniture of the two houses thereof, and not permit the same to be wasted or used for other than public purposes during the recess of the legislature. *Sixth*—To take charge of and keep in repair and replenish the furniture of the state house, except as otherwise provided. *Seventh*—To furnish the legislature and the officers thereof all necessary fuel and stationery when so directed by resolution of the legislature, or either branch thereof. *Eighth*—To print and supervise the distribution of laws and journals, and keep an account thereof. *Ninth*—To make out and present to the governor, at least ten days before each regular session of the legislature, a report showing the amount of all fees received by him and paid over to the treasurer, the expenditures of his office, the contracts let by the state for fuel, stationery, and printing, and for copying, printing, binding, and distributing the laws and journals, and for all other printing ordered by the legislature, and stating particularly the manner in which the same have been fulfilled and such geneeral accounts of the business of his office as may be necessary for the informtion of the legislature. *Tenth*—In the publication of the laws of this state, or the resolution or journals of the legislature, the secretary of state shall cause to be published in each volume a general certificate to the effect that the same as contained in such volumes are true copies of the laws and resolutions of the legislature, as the case may be, on file in his office. *Eleventh*—Whenever any bill which shall have passed both houses of the legislature shall be returned by the governor with his objections thereto, and upon a reconsideration shall pass both houses by the constitutional majority, it shall be authenticated as having become a law by a certificate thereon to the following effect, viz.: This bill having been returned by the governor, with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law this —— day of ——, A. D. ——, which, being signed by the president of the senate and speaker of the house of representatives, shall be deemed a sufficient authentication thereof, and the bill shall be deposited with the laws in the office of the secretary of state. *Twelfth*—Whenever any bill which shall have passed both houses of the legislature and shall not be returned by the governor or filed with his objections in the office of the secretary of state, as required by section fifteen (15) of article five (5) of the constitution, it shall be the duty of the secretary of state to authenticate the same by a certificate thereon to the following effect, as the case may be, viz.: This bill having remained with the governor five (5) days, Sundays excepted, the legislature being in session, the governor having failed to return this bill to the legislature during its session, and having failed to file it in my office with his objections within five (5) days after adjournment of the legislature, it has thereby became a law. Witness my hand this —— day of ——, A. D. ——.

3088. The secretary of state shall have power to appoint a **deputy**, and when so appointed the deputy shall do and perform, in case of the absence or disability of the secretary of state, all the duties herein authorized and required of the secretary of state, and the secretary of state shall be responsible for all the official acts of his deputy.

3089. Said **deputy** shall receive a **salary** of fifteen hundred dollars ($1,500) per annum, to be paid by warrant of the auditor of public accounts on the treasurer, said warrant to be drawn monthly.

3090. The secretary of the state shall have power to **administer oaths** and affirmations, acknowledgments, and proof of the execution of deeds, mortgages, power of attorney, and other instruments in writing, to be used or recorded in this state. He shall be allowed such fee as is provided for notary public in such cases made and provided.

TREASURER.

Secs. 3091 to 3099 formed secs. 17 to 28, except secs. 25 and 26, ch. 4, R. S. 1866, p. 24.

3091. The *state treasurer shall **reside** and keep his **office** at the seat of government.

3092. It shall be the **duty** of the *state treasurer: *First*—To receive and keep all moneys of the state not expressly required to be received and kept by some other person. *Second*—To disburse the public moneys upon warrants drawn upon the state treasury according to law and not otherwise. *Third*—To keep a just, true, and comprehensive account of all moneys received and disbursed. *Fourth*—To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them. *Fifth*—To render a full statement to the auditor of all moneys received by him from whatever source; if on account of the revenue, for what years; of all penalties and interest on delinquent taxes reported to, or accounted for, to him, and of all disbursements of the public funds; with a list, in numerical order, of all warrants redeemed, the name of the payee, amount interest, and total amount allowed thereon; with the amount of the balance of the several funds unexpended; which statement shall be made on the first day of December, March, June, and September, and oftener if required. *Sixth*—To report to the legislative assembly as soon as practicable, but within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding fiscal year. *Seventh*—To give information in writing to either house of the legislative assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office. *Eighth*—He shall account for and pay over all moneys received by him as such treasurer to his successor in office, and deliver all books, vouchers, and effects of office to him, and such successor shall receipt therefor.

3093. All the **books,** papers, letters, and transactions pertaining to the office of treasurer shall be **open to** the **inspection** of a committee of the legislative assembly or either branch thereof, to examine and settle all accounts, and to count all moneys; and when the successor of any such treasurer shall be elected and qualified the state auditor shall examine and settle all accounts of such treasurer remaining unsettled, and give him a certified statement showing the balance of moneys, securities, and effects for which he is accountable, and which have been delivered to his successor, and report the same to the legislative assembly.

3094. The **treasurer** shall have power to **administer** all **oaths** required by law, in matters pertaining to the duties of his office.

3095. The treasurer shall keep a **seal** of office for the authentication of all **papers,** writings, and documents required by law to be certified by him, and **copies** so authenticated and certified, of all papers and documents lawfully deposited in his office, shall be received as **evidence** the same as the original papers and documents.

3096. If the state treasurer shall willfully refuse or **neglect to pay** any **warrant** lawfully drawn upon the treasury, when the money for the payment of the same is in the treasury, he shall forfeit and pay fourfold the amount, to be recovered by action against the treasurer and his sureties, on his official bond or otherwise. He shall also suffer such punishment as the law may provide.

3097. The *treasurer shall have power to appoint a **deputy,** who shall give a bond to the state of Nebraska, with good and sufficient security, to be approved by the governor, in the sum of ten thousand dollars, which bond, together with a copy of his appointment and oath of office, the deputy shall deposit in the office of the secretary of state, and the said deputy may do and perform, in the absence of the treasurer, all of the acts and duties that he may be authorized to perform by the treasurer, subject to the same restrictions as the treasurer, and the treasurer shall be responsible for all the official acts of his deputy.

3098. The auditor and the *treasurer shall **deliver** over **to** his **successor** in office all books, papers, **records**, vouchers, presses, and furniture appertaining thereto.

3099. The **fiscal year** shall commence on the first day of December, in each year, and end on the thirtieth day of November, in each year.

Secs. 3100 to 3102. "An act to provde for the **publication of** the **laws** and journals of the sixteenth session of the legislature, and the biennial reports of certain state officers, and for the preservation of said reports." 1881, p. 390. In force February 28. (Secs. 1 and 2, referring only to a particular session, are omitted.)

3100. That the **state officers** who are required by law to make biennial **reports** to the legislature shall cause the same to be printed by the state printer, and have ready for distribution on or before the first day of the session of the legislature, as hereinafter provided, viz.: one thousand copies each of the reports of the auditor, treasurer, secretary of state, and commissioner of public lands and buildings, and five hundred copies each of the reports of the attorney general, superintendent of public instruction, state librarian, and adjutant general.

3101. The secretary of state shall be required to **deliver to** the **state librarian** two hundred copies each of the reports of the auditor, treasurer, secretary of state, and commissioner of public lands and buildings, and one hundred copies each of the reports of the attorney general, superintendent of public instruction, state librarian, and adjutant general, who shall preserve the same for the use of the state officers and members of the legislature.

3102. It shall be the further duty of the state librarian to select **one copy each** of said reports and have the same bound in one volume, which shall ever be **kept** in the state **library** for public inspection.

Secs. 3103 and 3104. "An act requiring officers of the executive department and of all the public institutions of the state when making their reports to the governor as required by section twenty-two (22) of article five (5) of the constitution to include therein a **schedule of** all the personal **property** in such institutions or under their control belonging to the state, giving the condition thereof, and to account for the loss or disposition of any such property since their last report or since the last report of their predecessors in office, and to repeal any act or parts of acts inconsistent with the provisions of this act." 1889, p. 582. In force June 30.

3103. That it shall be the duty of all **officers** of the executive department and of all the public institutions of the state when making the report to the governor required by section twenty-two (22) of article five (5) of the constitution to include in such report a **schedule** of all personal **property** in such public institutions or under their control belonging to the state, and the condition thereof, and to account in said report for all such personal property belonging to the state as aforesaid, as may have been destroyed or in any manner disposed of, whether by natural wear and tear or otherwise, since the date of the last report made by such officers or their predecessors in office, to the governor as required by said section twenty-two (22) of article five (5) of the constitution.

3104. Any officer specified herein who makes a **false report** shall be guilty of perjury and punished accordingly.

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*Original chapter reads "territorial." Abrogated by constitution.

V. COUNTY OFFICERS.

For County Judge, see Courts, sec. 1076. For County Superintendent, see Public Instruction, sec. 3595. For County Commissioners, see Counties, sec. 897.

ATTORNEY.

Secs. 3105 to 3117. "An act to provide for the election of county attorneys, to define their duties and fix their salaries," etc. 1885, p. 215. In force June 5. Repeals secs. 15 to 21, ch. 7, Compiled Statutes 1881, entitled "District Attorneys." Former acts—Secs. 15 to 21, ch. 3, R. S. 1866, p. 16, entitled "Prosecuting Attorneys," repealed by "An act to provide for the election of district attorneys and to define their duties," 1867, p. 48, sec. 6 of which was amended by an act approved February 15, 1869.

3105. That at the general **election** in 1886, and every two years thereafter, a county attorney shall be elected in each organized county for judicial purposes, who shall hold his office for the **term** of two years, and until his successor is elected and qualified, who shall, before he enters upon the duties of said office, execute a bond to the state of Nebraska, in a sum, not less than one thousand dollars, to be fixed by the county board, with two or more good and sufficient sureties, to be approved by said board, which bond shall be conditioned for the faithful performance of his duties as such officer, and that he will pay over to the county treasurer, in the manner prescribed by law, all moneys which shall come into his hands by virtue of his office, and shall file said bond in the office of the county clerk, and the same shall be recorded in the proper records of the said county.

County atttorney is a county officer. **26,** 252 (41 N. W., 1093). In criminal case district attorney can have assistance employed by private parties. **14,** 544 (16 N. W., 898).

3106. It shall be the **duty** of the county attorney to appear in the several courts of their respective counties and prosecute and defend, on behalf of the state and county, all suits, applications or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested.

Attorney of county to which and not from which change of venue is made should prosecute. **27,** 723 (43 N. W., 747; 44 N. W., 108).

3107. Each county attorney shall appear on behalf of the state before any magistrate, and **prosecute** all **complaints,** made in behalf of the state, of which any magistrate shall have jurisdiction, and he shall appear before any magistrate and conduct any criminal examination which may be had before such magistrate, and shall also prosecute all **civil suits** before such magistrate in which the state or county is a party or interested.

3108. The county attorney shall, without fee or reward, give opinions and **advice to** the board of county commissioners and other civil **officers** of their respective counties, when requested so to do by such board or officers, upon all matters in which the state or county is interested, or relating to the duty of the board or officers in which the state or county may have an interest.

3109. The county attorneys of the several counties of this state shall be allowed by the board of county commissioners for their services a **salary,** per year, as follows: In counties of not more than 2,500 inhabitants a salary of three hundred dollars per annum; and in counties having over 2,500 and under 5,000 inhabitants, a salary of five hundred dollars; *Provided,* That in any county which shall have one or more unorganized counties or any territories attached thereto for judicial purposes, the compensation may be increased by the county board, not exceeding two hundred dollars additional. In counties of from five to ten thousand inhabitants, six hundred and fifty dollars; in counties of from ten to twenty thousand inhabitants, a salary of eight hundred dollars; in counties of from twenty to thirty-five thousand inhabitants, a salary of one thousand dollars; in counties of from thirty-five thousand inhabitants and upwards, a salary of two thousand five hundred dollars. Said salaries shall be payable in quarterly installments at the end of each regular quarter.

3110. The county attorney may appoint one or more **deputies**, who shall act without any compensation from the county, to assist him in the discharge of his duties; *Provided*, That the county attorney of any county may, under the direction of the district court, procure such assistance, in the trial of any person charged with the crime of felony, as he may deem necessary for the trial thereof, and such assistant or **assistants** shall be allowed such reasonable compensation as the county board shall determine for his services, to be paid by order on the county treasurer, upon presenting to said board the certificate of the district judge before whom said cause was tried, certifying to the services rendered by such assistant or assistants.

May be assisted in criminal prosecutions by counsel employed on private account. **27**, 721 (43 N. W., 747; 44 N. W., 108). Board not concluded by certificate of judge fixing fee. **23**, 766 (37 N. W., 626).

3111. In the absence, sickness, or **disability** of the county attorney and his deputies, the **court** before whom it is his duty to appear, in which there may be business for him, may **appoint** an attorney to act as county attorney, by an order to be entered upon the minutes of the court, but who shall receive no compensation from the county except as provided for in section six (6) of this act.

Where attorney of county to which change of venue has been made appeared for accused in former trial of same case, court should appoint a substitute. **27**, 726 (43 N. W., 747; 44 N. W., 108).

3112. **No** prosecuting attorney shall receive any **fee** or reward **from** or on behalf of any prosecutor or other **individual**, for services in any prosecution or business to which it shall be his official duty to attend; nor be concerned as an attorney or counsel for either party, other than for the state or county, in any civil action depending upon the same state of facts upon which any criminal prosecution, commenced or prosecuted, shall depend.

3113. It shall be the duty of the county attorney, whenever he shall receive any **money** in his official capacity, to give to the person paying the same duplicate **receipts**, one of which shall be filed by such person with the county clerk.

3114. Whenever the county attorney is required by the **grand jury** of any court sitting in his county, it shall be the duty of said **county attorney** to **attend** them for the purpose of examining witnesses in their presence, or of giving them advice in any legal matter, and to issue subpœnas and other writs of process; to bring in witnesses, and to draw up bills of indictment, but he shall not be present with the grand jury when an indictment is being considered and found by said grand jury.

3115. In case of **vacancy** in the office of county attorney by death, resignation, or otherwise, the county board shall appoint a county attorney, who shall give bond, and take the same oath and perform the same duties as the regular county attorney; and shall hold said office until his successor shall be elected and qualified.

3116. That whenever the term **district** attorney or **prosecuting** attorney appears in the laws of Nebraska, it shall hereafter **mean county** attorneys, and all laws now in force regulating the duties of district attorneys in criminal matters and proceedings shall apply to county attorneys herein provided for.

3117. The respective **district** prosecuting **attorneys** shall **hold** their respective offices **until** the **expiration of** their present **term**, as now provided by law, and the said county attorneys are elected and qualified as provided for in section 1 of this act.

CLERK.

Secs. 3118 to 3122 formed secs. 73 to 77, 1879, p. 374.

3118. The county clerk shall keep his **office** at the county seat; shall attend the sessions of the county board; keep the seal, records, and papers of said board; and shall sign the record of the proceedings of the board, and attest the same with the county seal.

3119. It shall be the **general duty** of the county clerk: 1st. To record, in a book provided for that purpose, all proceedings of the board. 2d. To make regular entries of their resolutions and decisions in all questions concerning the raising of money. 3d. To countersign all warrants issued by the board, and signed by its chairman. 4th. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required of him by law.

3120. Such clerk shall not issue any county **warrants** unless ordered by the board of commissioners authorizing the same; and every such warrant shall be numbered consecutively as allowed from the first day of January to the thirty-first day of December in each year, and the date, amount, and number of the same, and the name of the person to whom it is issued shall be entered in a book called "Warrant Book," to be kept by the clerk in his office for that purpose. When any warrant is returned as canceled, the clerk shall note the date of cancellation opposite such entry.

Clerk no authority to issue warrants unless signed by chairman of board of supervisors. 8, 217.

3121. The county clerk shall keep a book in which shall be entered in alphabetical order, by name of the principal, a minute of all official **bonds** filed in his office, giving the name of the office, amount and date of bond, names of sureties, and date of filing, with proper reference to the book and page where the same is **recorded.**

3122. It shall be the duty of the county clerk to record in a proper book, to be called the "**Road Record,**" a record of the proceedings in regard to laying out and establishing, changing, or discontinuing roads in the county.

Secs. 3123 and 3124 formed secs. 89 and 90, 1879, p. 378.

3123. The county clerk shall keep a distinct **account with** the **treasurer** of the county for each several term for which the treasurer may be elected, in a book to be provided for that purpose, commencing from the day on which the treasurer became qualified, and continuing until the same or another person is qualified as treasurer; in which account he shall charge the treasurer as follows: With the amount of taxes levied and assessed in each year as the same appears on each tax list, delivered to him during his term of office; with the amount of money, and with the amount of state, county, and general fund warrants, road orders, or other evidences of indebtedness which the county treasurer may have been authorized to receive from his predecessors in office; with the amount of any additional assessments made after the delivery of any tax list; with the amount of any additional penalty added to the taxes, after the same become delinquent according to law; with the amount due the county for advertising lands for sale for delinquent taxes; with the amount of the school fund received from the state treasurer; with the amount received from the sale of any property belonging to the county; with the amount received as fines and forfeitures; with the amount received from dram-shop, tavern, grocery, or other license; with the amount of money received from any other source authorized by law. And upon presentation of proper vouchers, shall credit him as follows: With the amount of all county, school district, or other tax, which has been paid over to the proper authority and receipted for; with the amount of county warrants received by the county treasurer and returned to the county board and canceled; with the amount paid to the state treasurer, and to school district treasurers, or other officers entitled by law to receive the same; with the amount of delinquent taxes and any additional penalty due thereon; with the amount due on lands and lots, for advertising the same for sale; with the amount of double and erroneous assessments of property; with the amount of percentage fees allowed by law to the county treasurer for collecting taxes; with the amount of money and the amount of warrants, or orders or other evidences of indebtedness which the county treasurer is allowed by law to receive for taxes, which he pays over to his successor in office; with the amount of taxes uncollected on the tax list delivered over to his successor in offices

3124. It shall be the duty of the county clerk to **report to** the **secretary** of state on or before the first day of December, annually, the names of all county officers with their official signatures and seals of their respective offices, and whenever any change is made in the incumbent of any county office, the change shall be forthwith reported by the county clerk to the secretary of state, who shall preserve and record such lists with changes subsequently made therein.

Secs. 3125 and 3126. "An act to authorize county clerks to administer oaths and affirmations and take acknowledgments, and legalize acknowledgments and oaths heretofore taken and administered by county clerks." 1883, p. 181. In force February 24.

3125. All **county clerks** and their deputies within the state of Nebraska shall have authority to **administer oaths** and affirmations in all cases where oaths and affirmations are required, and to take acknowledgments of deeds, mortgages, and all other instruments in writing, and shall attest the same with the county seal.

Need not attest oath taken and to be filed in his office with seal. **16**, 450 (20 N. W., 389).

3126. All **oaths** and affirmations heretofore administered, and all acknowledgments heretofore taken by county clerks and their deputies in the legal form shall be and they are hereby **declared** to be **legal** and valid.

Secs. 3127 and 3128. "An act to provide for certificates of the clerk of the district court to be filed with the county clerk in cases of foreclosures of mortgages." 1887, p. 564. In force July 1.

3127. That in all cases of **foreclosure** of mortgages in the several counties in the state, it shall be the duty of the clerk of the district court, on the **satisfaction** or payment of the amount of the decree, to forward to the county clerk a **certificate** setting forth the names of parties, plaintiff and defendant, description of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded, for which certificate the clerk shall be entitled to a fee of one dollar ($1), which amount shall be taxed as part of the costs in the case, and one-half of said sum shall be paid to the county clerk as his fee for recording the certificate, and the other half retained by the clerk of the district court.

3128. It shall be the duty of the county clerk, on receipt of said certificate, to **enter** the same upon his numerical index, **and record** the same in the mortgage record of his office.

CORONER.

Secs. 3129 to 3148 formed secs. 96 to 115, 1879, p. 380.

3129. When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to **exercise** all the **powers** and duties **of the sheriff** of his county until a sheriff is elected and qualified.

3130. The coroner shall hold an **inquest** upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person, supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to a constable of his county, requiring him to summon forthwith six lawful men of the county to appear before the coroner, at a time and place named in the warrant.

3131. The warrant may be in substance as follows: "The state of Nebraska, ——— county. To any constable of said county: In the name of the people of the state of Nebraska, you are hereby required to summon forthwith six lawful men of your county to appear before me at ———, on the —— day of ———, 18—, then and there to hold an inquest upon the dead body of ———, there lying, and by what means he died. Witness my hand this —— day of ———, A. D. 18—. ———, Coroner."

3132. The constable shall execute the warrant and make return thereof at the time and place therein named.

3133. If any juror fails to appear, the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to impanel them and administer the following oath in substance: "You do solemnly swear that you will diligently inquire and true presentment make, when, how, and by what means the person whose body lies here dead, came to his death, according to your knowledge and the evidence given you, so help you God."

3134. Whoever, being so summoned as a juror, fails or refuses, without good cause, to attend at the time and place required, or appearing, refuses to act as such juror, or misbehaves while acting as such juror, shall, on complaint of the coroner before any justice of the peace in the county, be fined not less than three nor more than twenty dollars.

3135. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct.

3136. An oath shall be administered to the witnesses in substance as follows: "You do solemnly swear that the testimony which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God."

3137. If the evidence of any witness shall implicate any person as the unlawful slayer of the person over whom the said inquisition shall be held, the coroner shall recognize such witness in such sum as he may think proper, to be and appear at the next term of the district court for the said county, there to give evidence of the matter in question, and not depart without leave. Such recognizance shall be in the same form, as near as practicable, and have the same effect as recognizances taken before justices of the peace in cases of felony.

3138. The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands, in substance as follows, and stating the matter in the following form, as near as practicable: "State of Nebraska, ——— county. At an inquisition holden at ———, in ——— county, on the —— day of ———, A. D. 18—, before me ———, coroner of said county, upon the body of ———, lying dead, by the jurors whose names are hereto subscribed, the said jurors upon their oath do say ——— (here state when, how, or by what person, means, weapon, or accident he came to his death, and whether feloniously). In testimony whereof, the said jurors have hereunto set their hands the day and year aforesaid. ———, Coroner. Attest ———."

3139. If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace for examination, or if the person charged be not present and the coroner believes he can be taken, he may issue a warrant to the sheriff or constable, requiring him to arrest the person and take him before a justice of the peace for examination.

3140. The **warrant** of the coroner in the above stated cases shall be of equal **authority** with that of a justice of the peace; and when the person charged is brought before the justice, he shall be dealt with as a person held under a complaint in the usual form.

3141. The **warrant** of the coroner shall **recite** substantially the verdict of the jury of inquest, and such warrant shall be a sufficient foundation for the proceedings of the justice instead of a complaint.

3142. The coroner shall **return to** the **district court** the inquisition, the papers connected with the same, and a list of the names of witnesses who testify in the matter.

3143. When any valuable personal **property**, money, or papers are found upon or near the body upon which an inquest is held, the coroner shall take charge of the same and deliver the same to those entitled to its care or possession; but if not claimed, or if the same shall be necessary to defray expenses of the burial, the coroner shall, after giving ten days' notice of the time and place of sale, sell such property, and after deducting coroner's fees and funeral expenses, deposit the proceeds thereof, and the money and papers so found, with the county treasurer, taking his receipt therefor, there to remain subject to the order of the legal representatives **of** the **deceased,** if claimed within five years thereafter, or if not claimed within that time, to vest in the school fund of the county.

3144. The coroner shall cause the **dead body** of each deceased person which he is caused to view to be **delivered** to the friends of the deceased, if there be any, but if there be none, he shall cause the body to be decently buried and the expenses shall be paid from any property belonging to the deceased, or if there be none, from the county treasury, by warrant drawn thereon.

3145. When there is **no coroner,** and in case of his absence or inability to act, the **sheriff** of the county is **authorized** to discharge the duties of coroner in relation to dead bodies.

3146. If the coroner or jury deem it necessary, for the purposes of an inquisition, to summon any **surgeons,** the coroner shall issue a **subpœna** for those preferred, the same as for any other witness.

3147. The coroner is hereby authorized and required, on a request of a majority of the coroner's jury, to issue his **warrant** for any **person suspected** of having committed the crime of murder, and hold such person on said warrant until the inquest over the body is closed.

3148. The **verdict** of the coroner's jury, charging any person with murder or manslaughter, shall have the same **force** and effect as the finding of a bill of indictment by the grand jury, until the case shall have been investigated by a grand jury, and they shall have made their return thereon.

Secs. 3149 and 3150. 1881, p. 222. In force March 3. Supplementary to the act of 1879.

3149. Every **coroner** shall serve and execute process of every kind, and **perform** all other **duties of** the **sheriff, when** the sheriff shall be a party to the case, or whenever affidavits shall be made and filed as provided in the succeeding section, and in all such cases he shall exercise the same powers and proceed in the same manner as prescribed for the sheriff in the performance of similiar duties.

Coroner may serve writ of replevin when sheriff is a party to the action. **12,** 498 (11 N. W., 749). This applies to process issued by county court and justices. **16,** 647 (21 N. W., 436).

3150. Whenever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit stating that he believes the **sheriff** of such county will not, by reason of either partiality, prejudice, consanguinity, or **interest,** faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the **coroner,** who shall **execute** the same in like manner as the sheriff might or ought to have done, and if like objection shall be made to the coroner by either party, the court shall appoint some suitable person to whom such objection doesnot apply.

REGISTER OF DEEDS.

Secs. 3151 to 3167. "An act to provide for the election of **registers of deeds** and to define their duties and fix their **compensation,**" etc. 1887, p. 362. In force July 1. (Secs. 3157 to 3167 formed secs. 78 to 88, Laws 1879, p. 375. all of which, except secs. 80 and 82, were amended by this act; the two latter being applicable without amendment.)

3151. At the general **election** in the year 1889, and every four years thereafter, a register of deeds shall be elected in and for each county having a population of eighteen thousand and three (18,003) inhabitants or more, to be ascertained by the census of 1885, and each state and national census thereafter, who shall give **bond,** with sufficient sureties thereon, to be approved by the county board, in the penal sum of ten thousand dollars ($10,000), conditioned for the faithful performance of his duties, and such register of deeds shall have all the powers and perform all the duties relative to all papers, writings, and instruments pertaining to real estate heretofore enjoined by law upon county clerks, and shall receive the compensation allowed by law therefor. Said register of deeds shall assume the duties of his office on the first Thursday after the first Tuesday in January following his election, and shall keep his office at the county seat of the county in and for which he shall be elected, and each register of deeds whose **fees** in the aggregate exceed the sum of fifteen hundred dollars ($1,500) in any one year after the payment of the necessary deputy and clerk hire, shall pay such excess into the treasury of the county in which he holds his office; *Provided, however,* That in counties having more than twenty-five thousand (25,000) and less than sixty thousand (60,000) inhabitants, the register of deeds shall receive the sum of two thousand dollars ($2,000) per annum, after payment of deputy and clerk hire, as herein provided; *And provided further,* That in counties having more than sixty thousand (60,000) inhabitants, the register of deeds shall receive the sum of two thousand five hundred dollars ($2,500) per annum, after the payment of the necessary deputy and clerk hire as hereinbefore provided; *Provided further,* That in counties of sixty thousand (60,000) inhabitants or less, the register of deeds may retain no more than one thousand dollars ($1,000) per annum for the services of each deputy, nor more than sixty dollars ($60) per calendar month for the services of each copyist, or assistant; and that in counties having more than sixty thousand (60,000) inhabitants, he may retain no more than twelve hundred dollars (1,200) per annum for the services of each deputy, nor more than sixty dollars ($60) per calendar month for the services of each copyist or assistant; *And provided further,* That in no instance shall such register of deeds receive more than the fees by him collected, nor shall any money be retained by him for services of deputies or assistants unless the same be actually paid to such deputies or assistants for their services.

Term increased to four years. 1889, p. 85.

3152. In each county of eighteen thousand and three (18,003) inhabitants or more, and where the offices of register of deeds and county clerk are separate, the county board shall provide suitable **office room,** fire-proof vaults of sufficient capacity, and necessary books, blanks, stationery, and office furniture for the use of the register of deeds.

3153. In each county having less than eighteen thousand and three (18,003) inhabitants, and until such register of deeds shall be appointed or elected and qualified therein, the **county clerk** shall perform all the duties enjoined by law upon such officer, and shall be **ex-officio** register of deeds.

3154. The register of deeds shall keep a book in which every instrument filed for **record** in his office shall be entered at the time of filing the same. Such book shall show the final disposition of such instrument and be as nearly as practical in the following form, to wit:

Grantor.	Grantee.	Character of Instrument.	Where Recorded		Date of Delivery.			Receipt of Party to whom Delivered.
			Book.	Page.	Month.	Day.	Year.	

3155. The register of deeds shall have and keep an official **seal,** which shall have engraved thereon the name of the county, register of deeds, and the word Nebraska, and he shall attach an impression of said seal to every certificate made by him except such as are required to be endorsed upon instruments filed in his office for record, and copies of any record in his office, certified under his hand and said official seal, shall be receivable in evidence in all respects in the same manner as the original records.

3156. The register of deeds shall have power to take acknowledgments and **administer oaths,** and to certify the same under his hand and official seal, and may appoint one or more **deputies** when authorized by the county board, who shall have all the powers and perform all the duties of such register of deeds upon giving bond as provided by law.

3157. The register of deeds shall have the custody of and safely keep and **preserve** all books, **records,** maps, and papers kept or deposited in his office. He shall also **record,** or cause to be recorded, in suitable books, all deeds, mortgages, **instruments,** and writings authorized by law to be recorded in his office, and left with him for that purpose.

See **12,** 169 (10 N. W., 716).

3158. The register of deeds shall keep a grantor and a grantee **index** of deeds in his office the pages of each of which shall be divided into eight colums, as follows, to wit:

GRANTOR INDEX.

Grantors.	Grantees.	Date of Filing.	Date of Instrument.	Character of Instrument.	Book.	Page.	Description of Tract.

GRANTEE INDEX.

Grantees.	Grantors.	Date of Filing.	Date of Instrument.	Character of Instrument.	Book.	Page.	Description of Tract.

3159. The **entries** in such index shall be double the one showing the names of the respective grantors, arranged in alphabetical order, and the other those of the grantees in like order. When there are two or more grantors having different surnames, there must be as many distinct entries among the grantors as there are names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

3160. The register of deeds shall endorse upon every **instrument** properly filed in his office for record, the minute, hour, day, month, and year when it was so filed, and shall fiorthwith enter the same in the proper indices herein provided for, and after the same shall have been recorded, the book and page where it may be found shall be **endorsed** thereon.

3161. **Different** sets of **books** shall be provided **for** the **recording** of deeds and mortgages; in one of which sets all conveyances absolute in their terms, and not intended as mortgages, or as securities in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

12, 169 (10 N. W., 716).

3162. The register of deeds shall also keep a separate book to be called the **Mechanics' Lien Record,** in which all instruments provided by law for securing mechanics' liens shall be recorded. He shall also keep a tax **register** of **mortgages** on real estate, in which he shall enter all such mortgages filed for record. Said register shall show the name of the mortgagor, the name of the mortgagee, description of the real estate mortgaged, and the time when the debt secured by the mortgage becomes due. It shall also contain a column in which shall be entered a memoranda of the discharge of such mortgage or any part thereof at the time the same is released.

3163. The register of deeds shall keep a **numerical index** as nearly as practicable in the following form, to-wit:

NUMERICAL INDEX. ....County, Nebraska.

Section.................. Township.................. Range..................

			N. E. ¼				N. W. ¼				S. W. ¼				S. E. ¼							
Grantee.	Grantor.	Kind of Instrument.																	Acres.	Book.	Page.	Remarks.

This index is a public record. **17,** 173 (22 N. W., 353).

3164. It shall be the duty of the register of deeds on receiving any conveyance or **instrument** affecting realty including mechanics' liens, to cause such conveyance, instrument, or mechanics' lien to be **entered** upon the numerical index immediately after filing the same.

A mistake by the register in entering a description of mortgaged premises on the numerical index, the mortgage being in all other respects properly recorded and indexed, will not vitiate the record as to subsequent purchasers. **10,** 584 (7 N. W., 327). Where a deed or mortgage has been left with county clerk and fees paid for recording, held to be sufficient notice to subsequent purchasers. **22,** 731 (36 N. W., 292). See **12,** 169 (10 N. W., 716).

3165. After such instrument has been so indexed the register of deeds shall **endorse** on said **instrument** a certificate showing that the same has been indexed as herein required, and shall thereafter record said instrument as provided by law.

3166. The register of deeds shall keep a separate book to be called the **miscellaneous record,** in which all instruments and writings not entitled to be recorded in any of the books herein provided for shall be recorded.

3167. The register of deeds shall keep **indices** showing all mortgages and discharges of mortgages left for record, and entitled to be recorded in the same form as is required for deeds. He shall also keep a separate index to the volumes of mechenics' lien record, and to the volumes of miscellaneous records.

Secs. 3168 to 3172. "An act to require the register of deeds and county clerks who are ex-officio registers of deeds to procure and keep a **mortgage indebtedness record** and prescribing the form of same and to require annual reports by said registers therefrom." 1891, p. 230. In force July 4.

3168. That the registers of deeds and county clerks who are ex-officio registers of deeds of the various counties in this state are hereby directed and required to procure at [at]* the expense of their respective counties, and keep in their offices a book to be known as the "Mortgage Indebtedness Record" and such book shall be **open to** the **inspection** of the public.

3169. The register of deeds and the county clerk who is ex-officio register of deeds, shall each day **enter** in such record the aggregate number and amounts of **mortgages filed** for record excepting only railroad mortgages and the mortgages of gas, water, and similar corporations based on franchises or rights of way, and shall in making such entry enter the number and amounts of farm, town, and city and chattel mortgages separately, and shall also enter in the same manner the aggregate number **and** amounts of all such mortgages **released** of record, whether by deed of satisfaction or release, or quit claim or by marginal endorsement on the original record; and must keep a correct and accurate account of the same that the total number and amounts of all liens so released may be shown. All sheriff's special master's or other deeds which are based on foreclosed mortgages, shall be considered as releases of the corresponding number and amount of mortgages for the purposes of said record and shall be so counted in making up the totals for each day's entries and the aggregate number of such sheriff's or other deeds so considered as releases shall also be separately noted on the record.

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* So in original.

3170. The record herein provided for shall be in **form** substantially as follows:

Mortgage Indebtedness Record of ——, County ——, Nebraska, —— for ——, 189—

Date	FARM MORTGAGES.				TOWN AND CITY MORTGAGES.				CHATTEL MORTGAGES.				SHERIFF'S AND OTHER DEEDS IN FORECLOSURE		Remarks
	FILED		SATISFIED		FILED		SATISFIED		FILED		SATISFIED				
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	Farm No.	City No.	
1															
2															
3															
4															
5															
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26															
27															
28															
29															
30															
31															
Total															

There shall be allowed one line for each day and one page for each month in said record, and it shall be of at least one hundred and thirty (130) pages so that it shall last for ten years. It shall be the duty of the register to foot the totals of each day's entries at the close of each month and promptly at the end of each year to recapitulate in the record the monthly footings, and also to transmit to the state auditor a statement of the totals for each calendar year, and it shall be the duty of the state auditor to embody said statement in his reports.

3171. If any register shall **neglect** or refuse to perform any of the duties required of him by this act, he shall be deemed guilty of a misdemeanor in office, and proceeded against accordingly and shall, for any wilful omission **to keep** up such **record** or continued errors, neglect, or carelessness in the entries and footings therein, be subject to fine or **penalty** of not less than five dollars ($5) nor more than fifty dollars ($50) for each and every omission or error, and on information being furnished the county commissioners of such ommissions or errors, they shall have recovered from the Register by civil action for the benefit of the school fund, the amount of the penalty for such omissions or errors.

3172. The **record** herein provided for shall be **opened** in each county in this state as of the first day of June, 1891, and be kept continuously thereafter.

SHERIFF.

Secs. 3173 to 3188 formed secs. 116 to 131, 1879, p. 384.

3173. It is the **duty** of the sheriff to serve or otherwise execute according to law, and return, writs or other legal process issued by lawful authority, and to him directed or committed, and to perform such other duties as may be required of him by law.

3174. His **disobedience of** the command of any such **process** is a contempt of the court from which it was issued, and may be punished by the same accordingly, and he is further liable to the action of any person injured thereby.

3175. He shall have charge and custody of the **jail,** and the **prisoners** of the same, and is required to receive those lawfully committed, and to keep them himself, or by his deputy jailor, until discharged by law.

3176. The sheriff and his deputies are **conservators of** the **peace,** and to keep the same, to prevent crime, to arrest any person liable thereto, or to execute process of law, may call any person to their aid; and, when necessary, the sheriff may summon the power of the county.

3177. The sheriff shall **attend** upon the district **court** at its sessions in his county, and he is allowed the **assistance** of two constables, and of such further number as the court may direct, and shall attend the sessions of the county court when required by the judge.

3178. **No sheriff** or his deputy or constable shall appear in any court **as attorney** or counselor for any party, nor make any writing or process to commence or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

3179. No **sheriff** or his deputy or constable shall become the purchaser, either directly or indirectly, of any property by him exposed to **sale** under any process of law or equity; and every such **purchase** is absolutely **void.**

3180. Sheriffs and their deputies may execute any **process** which may be in their hands at the **expiration of** their **office**; and in case of a **vacancy** occurring in the office of sheriff from any cause, his deputies shall be under obligation to execute legal process then in his or their hands, and he and they will remain liable under the provisions of law as in other cases.

3181. When a sheriff goes out of his office he shall **deliver to** his **successor** all books and papers pertaining to the office, and property attached or levied upon (except as provided in the preceding section), and all prisoners in jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

3182. A sheriff may appoint a **special deputy** to serve any summons, by endorsement thereon substantially as follows: "I hereby appoint ——— my special deputy to serve the within writ;" which shall be dated and signed by the sheriff.

Constable cannot appoint deputy. 9, 90.

3183. Such special deputy shall make **return** of the time and manner of serving such writ, under his oath, and for making a false return he shall be guilty of perjury, and punished accordingly.

SURVEYOR.

3184. It shall be the duty of the county surveyor to make all **surveys** within his county that he may be called upon to make.

3185. The county commissioners of each county shall procure a suitable book for the use of, and which shall be kept by, the county surveyor, and in which it shall be the duty of the county surveyor to truly **record** all **surveys** made by him within twenty days after such surveys shall be made; and he shall, at the expiration of his term of office, deliver his said book to his successor in office, or to the county clerk of the proper county.

3186. The **record** shall **show** the metes and bounds of all surveys made by the surveyor in his county, at whose request and for whom the same were made, together with the names and oath of the chainmen employed, and shall be signed by the surveyor.

3187. All necessary **chainmen** shall be employed by the person or persons causing the survey to be made. The chainmen shall be disinterested persons, and approved of and sworn by the surveyor to measure justly and exactly, to the best of their knowledge and ability, all lines measured by them.

3188. It shall be the duty of the county surveyor to establish suitable and proper bounds and **monuments** at each corner or angle in all surveys made by him, and when growing trees are convenient to such corner or angle, he shall mark two or more with a blaze and notch, facing the corner or angle, as witness trees to the same, and shall note the courses and distances of such witness trees from the corner, together with a description of the size and kind of tree.

TREASURER.

Secs. 3189 to 3193 formed secs. 91 to 95, 1879, p. 379.

3189. It shall be the **duty** of the county treasurer to receive all money belonging to the county, from whatsoever source derived, and all other money which is by law directed to be paid to him. All money received by him for the use of the county shall be paid out by him only on the warrants issued by the county board according to law, except where special provison for the payment thereof is or shall be otherwise made by law.

3190. All **warrants** issued by the county board shall, upon being presented for payment, if there is not sufficient funds in the treasury to pay the same, be endorsed by the treasurer, "not paid for want of funds," and the treasurer shall also endorse thereon the date of such presentation and sign his name thereto. Warrants so endorsed shall draw interest from the date of such endorsement, at the rate of seven per cent per annum until paid. No account or claim whatsoever against a county, which has been allowed by the board, shall draw interest until a warrant shall have been drawn in payment thereof and endorsed as herein provided.

3191. The county treasurer shall perform such **additional duties** as are or may be prescribed by law.

3192. If any county treasurer shall neglect or refuse to render any account or settlement required by law, or shall fail or neglect to account for any balance due the state, county, township, school district, or any other municipal subdivision, or is guilty of any other misconduct in office, the county **board** may forthwith **remove** him from office, and appoint some suitable person to perform the duties of treasurer, until his successor is elected or appointed and qualified.

Procedure for removal pointed out. The fact that the moneys were stolen is no justification for the failure to account for them. **10,** 455 (6 N. W., 757).

3193. Whenever any person shall pay any money into the county treasury, the county treasurer shall give such person **duplicate receipts,** and the person receiving such duplicate receipts shall present them to the county clerk, who shall countersign one of said receipts, and return it to the person entitled thereto, and retain the other in his office; and no receipt so given shall be evidence of payment of such money, in the hands of any person except the county clerk, unless the same shall first be countersigned by said clerk.

Secs. 3194 to 3196. "An act to require county treasurers to publish a **report** of the **financial condition** of their respective county." 1883, p. 182. In force June 1.

3194. The county treasurer of each county shall, during the months of June, 1883, and January 1884, and **semi-annually** thereafter, cause to be published in a weekly newspaper, printed in the county, a tabulated statement of the affairs of his office, showing the receipts and disbursements of his office for the last preceding six months ending May 31 and December 31, as herein provided.

3195. Such **statements** shall **show:** *First*—The amount of money received and for what fund; *Second*—The amount of warrants or orders presented and registered, and upon what fund; *Third*—The amount of warrants or orders paid, and from what fund; *Fourth*—The amount of money on hand in each fund; *Fifth*—The amount of outstanding warrants or orders registered and unpaid; *Sixth*—The total amount of money on hand.

3196. The county shall pay to the **printer** a reasonable **compensation** for the publication of such statement.

REMOVAL OF COUNTY OFFICERS.

Secs. 3197 to 3205 formed ch. 45, R. S. 1866, p. 297.

3197. All county **officers,** including justices of the peace, may be charged, tried, and **removed** from office for official misdemeanors in the manner and for the **causes** following: *First*—For habitual or willful neglect of duty. *Second*—For gross partiality. *Third*—For oppression. *Fourth*—For extortion. *Fifth*—For corruption. *Sixth*—For willful maladministration in office. *Seventh*—For conviction of a felony. *Eighth*—For habitual drunkenness.

The words "willful" and "maladministration" discussed and defined, and county surveyor removed for removing government corner stones. **14,** 182 (15 N. W., 330). County treasurer cannot be removed without complying with the provisions of these sections. **10,** 455 (6 N. W., 757).

3198. Any person may make such **charge,** and the board of commissioners shall have exclusive original jurisdiction thereof by a summons.

Supervisors may be compelled to hear and act upon a proper complaint, and two-thirds of the members is a quorum. **18,** 422 (25 N. W., 587). This does not confer a judicial but an administrative power, and is not in conflict with the constitution. **15,** 247 (18 N. W., 45).

3199. The **proceeding** shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in this chapter.

3200. The **complaint** shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them, and be verified by the affidavit of any elector of the state that he believes the charges to be true.

3201. It will be sufficient that the summons require the accused to appear and answer the complaint of A. B. (naming the accuser) for "official misdemeanor," but a **copy** of the complaint must be **served with** the **summons.**

3202. No answer or other **pleading,** after the complaint, is necessary, but the defendant may move to reject the complaint or demur thereto, upon any ground rendering such motion or demurrer proper; and he may answer if he desires, and if he answer, the accuser may reply or not. But if there be an answer and reply, the provisions of this statute relating to pleadings in action shall apply.

3203. The questions of fact shall be tried as in other actions, and if the accused is found guilty, **judgment** shall be entered **removing** the officer from his office, and declaring the latter vacant, and the clerk shall enter a copy of the judgment in the election book.

3204. The accuser and the accused are liable to **costs** as in other actions.

3205. When the accused is an **officer** of the court and is **suspended,** the court may supply his place by appointment for the term.

Word "suspended" is not synonymous with word removed in sec. 1 of same act. 19, 444 (27 N. W., 427).

VI. DEPUTIES.

Secs. 3206 to 3211 formed ch. 15, R. S. 1866, p. 127.

3206. The state auditor, treasurer, and librarian respectively, and each county clerk, treasurer, sheriff, and surveyor, may **appoint a deputy,** for whose acts he shall be responsible; and from whom he shall require a bond, which appointment shall be in writing, and shall be revocable by writing under the principal's hand; and both the appointment and revocation shall be filed and kept in the office of the county clerk, in case of deputies for county officers, but in case of state officers they shall be filed and kept by the principals.

3207. In the absence or disability of the principal, the deputy shall perform the **duties** of his principal pertaining to his own office, but when an officer is required to act in conjunction with or in place of another officer, his deputy cannot supply his place.

3208. **[Officers cannot be.]**—The state auditor, treasurer, and librarian can neither of them appoint the other his deputy, nor can either the treasurer, sheriff, clerk, or surveyor of a county appoint either of the others.

3209. The **sheriff** may appoint such number of deputies as he sees fit.

3210. Each deputy shall take the same **oath** as his principal, which shall be endorsed upon and filed with the certificate of his appointment.

3211. When a county officer receiving a salary and no **fees** is compelled by the pressure of the business of his office to employ a deputy, the county commissioners may make a reasonable allowance to such deputy.

Secs. 3212 and 3213. "An act to authorize deputy clerks to take acknowledgments of deeds and other instruments, and to legalize acknowledgments already taken by such clerks." 1870 p. 17. In force June 1.

3212. Deputy clerks of the district and county courts in this state are hereby authorized to take **acknowledgments** of deeds and other instruments of writing in the name of their principals, and said acknowledgments shall be as legal and as valid as if taken by their principals.

3213. All **deeds** or other instruments of writing heretofore **acknowledged** in the usual form, before any deputy clerk of the district or county courts of any county in this state, shall be and they are hereby declared **legal** and valid.

VII. NOTARIES PUBLIC.

Secs. 3214 to 3227. "An act to provide for the appointment of notaries public and to define their duties." 1869, p. 20. In force February 8. Repealing ch. 38, R. S., 1866, p. 270.

3214. The **governor** is hereby authorized to **appoint** and commission such number of persons to the office of notary public, in each of the respective counties of this state, as he shall deem necessary; but no person shall be appointed a notary public except upon the **petition** of at least twenty-five legal voters of the county in which he resides. Each person appointed a notary public shall hold his office for the term of six years from the date of his commission, unless sooner removed, and shall reside in the county for which he was appointed and commissioned. **Provided*, That whenever the word county is used in this chapter it shall be construed to comprehend and include any unorganized territory or unorganized county attached to any organized county for judicial purposes; and any such unorganized territory or unorganized county attached to any organized county for judical purpurposes shall be considered attached to, in, and part of such county for all the purposes and requirements of this act.

Limit as to number omitted and all after * added 1883, p. 248.

3215. When any person shall be appointed to the office of notary public, the governor shall sign the **commission** of such person, and deliver the same to the secretary of state. Upon the receipt of such commission by the secretary, he shall affix thereto the great seal of the state, and attest the same, and transmit by mail or messenger the commission and a blank bond, to be executed by the person so appointed and commissioned, to the county clerk of the county for which such appointment was made, who shall within five days after the receipt by him of such commission, notify the person so appointed that he holds the commission and blank bond, and if the person appointed to such office does not, within thirty days after the date of such notice, execute the bond hereinafter mentioned, deliver the same to the clerk of the county, qualify, and receive his commission, the clerk shall return such commission to the secretary of state to be cancelled.

3216. Each person so appointed to the office of notary public shall, within the time limited in section two of this act, appear before the clerk of the county for which he was appointed, and demand the blank **bond** so transmitted by the secretary of state, and execute and deliver to such clerk a bond for the state of Nebraska, in the penal sum of two thousand dollars, with two securities, residents of such county, who shall severally justify, as hereinafter prescribed, conditioned for the faithful performance of the duties of such office; and such person so appointed to the office of notary public shall make **oath** or affirmation, to be endorsed on such bond, and subscribed by the person appointed before some officer authorized by law to administer oaths, and by him certified thereon, that he will support the constitution of the United States, the constitution of the state of Nebraska, and will faithfully and impartially discharge and perform the duties of the office of notary public. The county clerk shall file and preserve the bond in his office, and record the commission, bond, justification of the sureties, and oath of office in a book to be kept by him for that purpose, and shall transmit to the secretary of state, written or printed notice that the requirements of this act have been complied with by the person so appointed and commissioned, which notice shall be filed and preserved in the office of secretary of state.

3217. The justification of **sureties on** the **bond** shall be an oath or affirmation endorsed on such bond to the effect that each of the said sureties is a resident and freeholder of the county for which such notary public was appointed, and is worth at least the sum of two thousand dollars, over and above all debts and liabilities by him owing, and all property exempt by law from levy or sale on execution, which oath or affirmation shall be subscribed by the sureties, and taken before and certified to by some officer authorized by law to administer oaths, and any person swearing or affirming falsely in this regard shall be liable to and suffer all the pains and penalties of the statutes of this state to punish persons for the crime of perjury.

3218. Each notary public, before performing any duties of his office, shall provide himself with an **official seal,** on which shall be engraved the words "Notarial seal," the name of the county for which he was appointed and commissioned, and the word "Nebraska," and in addition, at his option, his name, or the initial letters of his name, with each seal, by impression, all his official acts as notary public shall be authenticated. Each person so appointed and commissioned shall also, before entering upon the duties of the office, provide himself with an official **record,** in which shall be recorded all his official acts, together with a copy of the instrument, certificate of protest, and notices and other matter by him acted upon —except the taking of acknowledgments and proofs of deeds, and other instruments required by law to be recorded, either in this or other states, affidavits and depositions, and other acts not relating to protests. And the record and seal of such notary public shall be exempt from levy or sale on execution, attachment, or warrant of distraint.

Not necessary that the name of the notary should be placed on the seal. Words "Notarial seal" sufficient. **21, 265** (31 N. W., 797).

3219. Every **person,** during the term of his office, so **appointed,** commissioned, and qualified to the office of notary public, is hereby authorized and **empowered,** within the county for which he was appointed to such office, to administer oaths and affirmations, in all cases; to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorneys, and other instruments in writing, to be used or recorded in this state, to demand acceptance or payment of any foreign, inland, or domestic bill of exchange, promissory note, or other obligation in writing, and to protest the same for non-acceptance or non-payment, as the case may be, and give notice to endorsers, makers, drawers, or acceptors, of such demand or non-acceptance or non-payment; and to exercise and perform such other powers and duties as by the law of nations, and according to commercial usage, or by the laws of the United States, or of any other state or territory of the United States, or of any other government, or country, may be exercised and performed by notaries public, and over his signature and official seal certify the performance of such duties so exercised and performed under the provisions of this act, which certificate shall be received in all courts of this state as presumptive evidence of the facts therein certified to; and on due proof of the loss of such original certificate, the record thereof, so kept by such notary public as is by this act prescribed, shall be received by all courts in this state as presumptive evidence of the facts therein recorded; *Provided,* That any person interested in the subject-matter of such certificate or record of such certificate may, by other evidence, contradict the matters and things set forth in such certificates, or in the record thereof.

3220. Every notary public, when notice by a party to any civil suit pending in any court of this state, upon any adverse party for the taking of any testimony of witnesses by **deposition,** or any commission to take testimony of witnesses to be preserved for use in any suit thereafter to be commenced, has been deposited with him, or when a special commission issued out of any court of any state or country without this state, together with notice for the taking of testimony by depositions or commissions, has been deposited with him, is empowered to issue summonses and command the presence before him of witnesses, and to punish witnesses for neglect or refusal to obey such summons, or for refusal to testify when present, by commitment to the jail of the county for contempt; and all sheriffs and constables in his state are hereby required to serve and return all process issued by notaries public in the taking of testimony of witnesses by commission or deposition.

Notary has power to commit for contempt witness who refuses to give deposition. **21,** 272 (**31** N. W., 929). But have no power to punish for misconduct other than refusal to answer. **31,** (48 N. W., 763).

3221. If any person shall be damaged or injured by the unlawful act, negligence, or **misconduct of** any **notary** public, in his official capacity, the person damaged or injured may maintain a civil action on the official bond of such notary public against such notary public and his sureties, and a recovery in such action shall not be a bar to any future action for other causes, to the full amount of the bond.

3222. Each person who holds or hereafter shall be appointed and commissioned to the office of notary public shall, within thirty days after the **expiration of** the **term** of his office, either by limitation, removal from office, or removal from the county for which he was appointed, enter in his official record a certificate over his hand and notarial seal, setting forth that such record is his official record as such notary public, from the day of the commencement of the term of his office, or other time of the commencement of his records, to the time of the expiration of his office, and deposit such record and certificate aforesaid in the office of the clerk of the county for which he was appointed notary public, and in the event of his death or removal from this state, such certificate shall be received in all the courts of this state as presumptive evidence that the record in which or to which such certificate shall be entered or attached was the official record of such notary public; and any person who shall neglect or fail to comply with the provisions of this section shall forfeit and be liable to pay to the county for which he was appointed and commissioned a notary public, for the use of the school fund, the sum of two hundred dollars, to be recovered in any court of the county having jurisdiction, in the name of the county, upon the relation of the district attorney of the district in which such county shall be situated.

3223. If any **county clerk** of any county in this state shall neglect or willfully refuse to perform the **duties** imposed on him by this act, or shall willfully refuse to deliver the commission so issued by the governor to any notary public, after he shall have duly filed the bond required by this act, and qualified, such county clerk shall forfeit and be liable to pay to the county for which such notary public was appointed, for the use of the school fund, the sum of two hundred dollars, to be recovered as provided in section nine of this act.

3224. No deed, mortgage, power of attorney, or other **instrument** in writing, **heretofore executed** and acknowledged or proven before a notary public, shall be held invalid or defective because the official seal of the notary public subscribing the certificate of acknowledgment, proof, or other official act of such notary public annexed thereto had engraved thereon the initial or abbreviation of any words, or other word or words different from those required to be contained or engraved on the seal of a notary public by this act.

3225. Whenever a **vacancy in** the **office** of notary public shall occur in any county, it shall be the duty of the county clerk to notify the secretary of state of the fact, who shall keep a record in his office of the name of the person appointed, date of his commission and time of its expiration, and the time such office becomes vacant, either by removal from office, removal from the county, or limitation of term of appointment, and when a vacancy shall occur in the office of notary public in any county, it shall be the duty of the secretary of state to notify the governor.

First part of original section, limiting the number, omitted. 1883, p. 249.

3226. The **secretary of state** shall be entitled, for receiving, affixing the great seal to, and forwarding the commission of a notary public, the sum of one dollar; and the county clerk of the county, to whom the same shall be forwarded, the sum of two dollars on each commission as **fee** for services under this act, to be paid by the person appointed and commissioned, before the delivery to him of the commission, which fees of the secretary of state shall be transmitted to him by the county clerk immediately after their receipt by him.

3227. That whenever charges of **malfeasance in office** shall be preferred to the governor against any notary public in this state, or whenever the governor shall have reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the governor may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him on a day and at an hour certain, after at least ten days from the day of service of such notice, and summon witnesses in the manner provided by this act, for the taking of testimony of witnesses by deposition, to appear before him, at the time in said notice specified, and take the testimony of such witnesses in writing, in the same manner as is by law provided for taking depositions, and certify the same to the governor, at which time the notary public under charges may appear, cross-examine the witnesses, and produce witnesses in his behalf, which cross-examination and testimony shall be likewise certified to the governor. Upon the receipt of such **examination**, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the governor shall examine the same, and if therefrom he should be satisfied the charges are substantially proven, the governor may remove the person charged from the office of notary public; and thereupon, within thirty days from such removal and notice thereof, such notary public shall deposit with the county clerk of the county for which he was appointed his commission as notary public, with his official record and certificate thereof, as prescribed by section nine of this act [3222]; and on his failure to do so, shall be liable to the penalty and payment of two hundred dollars, to be recovered in the manner provided in said section nine, which commission, on its receipt by the county clerk, shall be forwarded by him to the secretary of state, to be canceled; and thereafter such person so removed from office shall be forever disqualified from holding the office of notary public; and the fees for taking such testimony shall be paid by the county, at the same rate as fees for taking depositions by notaries public.

CHAPTER 40.—PARTNERSHIPS.

Secs. 3228 to 3230. "An act providing for the recording of the names of all members of associations doing business under a firm, partnership, or corporate name." 1875, p. 178. In force September 1.

3228. That any association of persons doing business in any county of this state under a firm, partnership, or corporate name, and not incorporated under the laws of this state, shall have recorded in the office of the county clerk of the county where the place of business of said association is located, a certificate signed by each member of such association, showing: *First*—The firm, partnership, or corporate name of such association; *Second*—The general nature of the business thereof and the principal place of doing business; and *Third*—The full name and residence of each individual member of such association.

3229. The county clerk of each county shall keep a book for the aforesaid purpose of recording said certificates and shall receive the same fees therefor as for recording other instruments, and such record or a certified transcript thereof shall be *prima facie* [evidence] in any court in this state of any of the facts therein set forth.

3230. Any person who shall for the space of twenty days fail, neglect, or refuse to comply with any of the provisions of this act, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, and any fine so adjudged against any member of any association may be collected by execution from the property of such association.

Secs. 3231 to 3255. "An act to authorize limited partnerships in the state of Nebraska." 1873. In force March 1. G. S., 504.

3231. That limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within this state, may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this chapter shall not be construed to authorize any such partnership for the purpose of banking or effecting insurance.

3232. Such partnerships may consist of one more persons, who shall be called general partners, and shall be joint and severally responsible as general partners now are by law, and of one or more persons who shall contribute in actual cash payments, or in goods, wares, merchandise, machinery, and fixtures, a specific sum as capital to the common stock, who shall be called special partners, and shall not be liable for the debts of the copartnerships beyond the fund so contributed by him or them to the capital stock.

Partners liable for full amount of partnership debts. 8, 363.

3233. The general partners only shall be authorized to transact business and sign for the copartnership and to bind the same.

3234. The persons desiring to engage in the formation of such partnerships, shall make and severally sign a certificate which shall contain: 1. The name of the firm under which such partnership is to be conducted. 2. The general nature of the business intended to be transacted. 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence. 4. The amount of capital in money or goods, wares, merchandise, machinery, and fixtures, which each special partner shall have contributed to the common stock. 5. The period at which the partnership is to commence, and the period at which it shall terminate.

3235. The **certificate** shall be **acknowledged** by the several persons signing the same before a notary public, or other officer authorized by law to take the acknowledgement or proof of the execution of conveyances of land, and such acknowledgment or proof shall be made and certified in the same manner as the acknowledgment or proof of conveyances of land may be made or certified.

3236. The **certificate** so acknowledged and certified shall be **filed** in the office of the county clerk of the county in which the principal place of business of the partnership shall be situated, and shall be recorded by such clerk in a book to be kept for that purpose, and in case any such partnership shall have a place of business in more than one county in the state, then a copy of such certificate, so acknowledged and certified by the clerk of the county where the original was filed, shall in like manner be filed and recorded in each other county in which such partnership shall have a place of business, in the office of the clerk of said county.

3237. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an **affidavit** of one or more of the general partners shall also be filed in the same office, stating that the **sums** specified in the certificate, or value thereof in goods, wares, merchandise, machinery, and fixtures, have been **contributed** by each of the special partners **to** the **common stock** and actually and in good faith paid into the general fund.

3238. No such partnership shall be deemed to have been formed until a **certificate** shall have been made, acknowledged, filed, and recorded, nor until an affidavit shall have been filed, as before directed; and if any **false statement** be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

3239. The partners shall immediately publish the **terms** of the partnership, when registered as above provided, for at least six consecutive weeks, in two newspapers to be designated by the clerk of the county in which the registry shall be made, and if no newspapers are **published** in the county, then the same shall be published in the judicial district in which their business shall be conducted, and if such publication be not made, the partnership shall be deemed general.

3240. **Affidavits of** the **publication** of such notice by the printer, publisher, or foreman of the newspapers in which the same shall be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

3241. Every **renewal** or continuance **of** such **partnership** beyond the time originally fixed for its duration, shall be **certified**, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

3242. Every **alteration** which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be **deemed a dissolution** of the partnership, and every such partnership which shall in any manner be carried on after any such alteration shall have been made, shall be deemed a general partnership unless renewed as a special partnership according to the provisions of this act.

Court has authority in a dissolution of partnership to decree an accounting. Good-will is a part of the assets. 9, 262 (2 N. W. 370).

3243. The business of the partnership shall be conducted under a **firm in** which the names of the general partners only shall be inserted, and if the **name** of any special partner shall be used in such firm he shall be deemed and held liable as a general partner.

3244. Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

3245. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him from the firm, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive such rate of interest on the sum so contributed by him as may be agreed upon in the articles of copartnership, not exceeding twelve per centum per annum, if the payment of such interest shall not reduce the original amount of such capital, and after the payment of such interest, if any profits shall remain to be divided, he may also receive his proportion of such profits.

3246. If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital with interest.

3247. A special partner may, from time to time, examine into the condition and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If he shall interfere contrary to these provisions, he shall be deemed in law a general partner, and accountable as such.

3248. The general partners shall be liable to account to each other and to the special partners for their management of the concern, as other partners are now liable by law.

See 7, 448.

3249. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable, civilly, to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

3250. Every sale, assignment, or transfer of any of the property or effects of such partnership when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with the like intent, shall be void as agaist the creditors of such partnership.

3251. Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, made by such general or special partner, when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership a preference over creditors of the partnership, and every judgment confessed, lien created or security given by any such partner under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

3252. Every special partner who shall violate any provision of the last two preceding sections, or who shall concur in or assist to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

3253. In case of the insolvency or bankruptcy of the partnership, no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all the creditors of the partnership shall be satisfied.

3254. No **dissolution** of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a **notice** of such dissolution shall have been filed and recorded in the office of the clerk of the county in which the original certificate was recorded, and published once in each week for four weeks in a newspaper printed in each of the counties, or if none are printed in the county, then in the judicial district where the partnership may have places of business.

In sale of interest of one partner to others, retiring partner's interest is his share of assets at time of final adjustment. Does not include money already received. 2, 4. Publication in local newspaper, held, under facts, not binding on non-residents. 27, 89 (42 N. W., 913).

3255. The **clerk** of the county shall be entitled to receive the same **fees** for recording the articles of copartnership, and the papers connected therewith, that he is now entitled to receive for recording deeds.

CHAPTER 41.—PAUPERS.

Secs. 3256 to 3278 formed ch. 40, R. S. 1866, p. 274.

3256. Every **poor person** who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be **supported by** the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall refuse to support his or her father, grandfather, mother, grandmother, child, or grandchild, sister, or brother, when directed by the county commissioners of the county where such poor person shall be found, whether such relative shall reside in the same county or not, shall forfeit and pay to the county commissioners, for the use of the poor of their county, such sum as may be by the county commissioners adjudged adequate and proper to be paid, not exceeding ten dollars per week for each and every week for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, before a justice of the peace or any other court having jurisdiction; *Provided,* That whenever any persons become paupers from intemperance or any other bad conduct, they shall not be entitled to suport from any relative except parent or child; **And provided further,* That such poor person entitled to support from any such relative may bring an action against such relative for support, in his or her own name and behalf.

Amended and all after * added 1883, p. 255. Chapter has no reference to support and care of insane persons confined in state hospital at public charge. **24,** 602 (39 N. W., 621). A pauper may maintain action in own name. **18,** 48 (24 N. W., 429). See **19,** 485 (27 N. W., 729); **19,** 575 (27 N. W., 647).

3257. The **children** shall **first** be **called upon** to support parents, if there be children of sufficient ability, and if there be none of sufficient ability the parents of such person shall next be called upon, and if there be no parents nor children, the brothers and sisters shall be next called upon, and if there be no brothers nor sisters, the grandchildren of such poor person shall next be called on, and then the grandparents; *Provided,* Married females, while they live with their husbands, shall not be liable to a suit* for maintenance beyond the interest or incomes of the estate of such married female held in her own right.

All after * added 1883, p. 256.

3258. When any such poor person shall not have any such **relatives** in any county in this state as are named in the preceding sections, or if such relatives shall not be of sufficient ability, or shall **refuse** to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided.

3259. The **justices** of the peace in each precinct shall be and they are hereby made **overseers** of the poor and are vested with the entire and exclusive superintendence of the poor in their respective precincts, excepting in cases of corporate towns or cities to which such superintendence and jurisdiction shall be by law granted; **Provided,* That the county commissioners of the several counties may employ a **physician** by the year to furnish such medical service as may be required by the poor of their county, excepting incorporate towns or cities as herein provided; *Provided, also,* That the salary of such county physicians shall not exceed two hundred dollars in any one year.

All after * added 1875, p. 89. But counties are liable to other physicians for necessary services rendered. **16,** 9 (19 N. W. 781).

3260. It shall be the **duty of** said **overseers** of the poor, within their respective precincts, to provide for all such persons as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, or other unavoidable cause, the necessaries of life, and in their discretion may confide such poor persons to some moral and discreet householder or householders in the county, of sufficient ability to provide for them. Every person to whom the care of any such poor person shall be entrusted, shall execute a bond to the county in which such poor person shall reside, conditioned that he or she will treat such poor person with humanity, and afford to him or her the necessary comforts of life fitted to his or her condition; said bond shall set forth the sum to be paid by said county for keeping such poor person.

3261. Said **overseers** shall, at each regular session of the board of county commissioners, make a full **report** of their actings and doings under this chapter, and return a list of all the poor within their respective precincts, specifying the age, sex, and infirmities of each.

3262. Upon making such report, it shall be the duty of the county commissioners to issue their warrants or drafts on the treasurer, for the payment of the **expense** necessarily incurred by the overseers of the poor in supporting such poor person.

3263. Any sum set forth in the **bond** executed to any county as aforesaid, may be lessened or increased at the discretion of the commissioners of said county, without affecting the validity of said bond.

3264. The county **commissioners** may, at any regular meeting, **remove** any **poor** person from the custody of any person or persons to whose care the overseers may have committed the keeping of such poor persons, without subjecting the overseers, or the county, to any claim for damages.

3265. The **overseers** in **fixing** the **amount** to be paid for the keeping of any poor person, shall take into consideration the ability of the poor person to labor.

3266. Any person becoming **chargeable** as a pauper in this state, shall be chargeable as such pauper **in** the **county** in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

3267. **[Non-resident.]**—If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county where he or she may be found; and it shall be the duty of the clerk of the county commissioners to send a notice by mail to the clerk of the county commissioners of the county in which such pauper resided, as before stated, that such person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or her.

3268. **If** said **pauper,** by reason of sickness or disease, or by neglect of the authorities of the county in which he or she resides, or for any other sufficient cause, **cannot be removed,** then the county taking charge of such individual may sue for, and recover from the county to which said individual belongs, the amount expended for and in behalf of such pauper, and in taking care of the same.

3269. Whenever any **non-resident,** or any other person not coming within the defination of a pauper, shall fall sick in any county in this state, not having money or property to pay his or her board, nursing, and medical aid, it shall be the duty of the overseers of the poor, of the precinct where such person shall be, to furnish such assistance to such person as they shall deem necessary; and if any such person shall die, said overseers shall provide all necessary means for a decent burial of such person.

County not liable for volunteer services to such person. 23, 721 (37 N. W., 623.

3270. The term "**residence,**" mentioned in this chapter, shall be taken and considered to mean the actual residence of the party or the place where he or she was employed; or in case he or she was in no employment, then it shall be considered and held the place where he or she made it his or her home.

3271. If any **person** shall **bring** or leave any **pauper** or paupers **in** any **county** in this state, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall **forfeit** and pay the sum of one hundred dollars for every such offense, to be sued for and recovered by and to the use of such county, before any justice of the peace, in the proper county.

3272. The county commissioners in each county are authorized, whenever they shall see fit so to do, to establish a **poor-house.**

3273. The county commissioners are hereby anthorized to **take** to the county, by grant, devise, or purchase, any tract of land not exceeding six hundred and forty acres, for the purposes of said poor-house.

3274. Said commissioners are hereby empowered to receive **donations** to aid in the establishment of such poor-house, and also empowered from time to time, as they shall see fit, to levy and collect a **tax,** not exceeding one per cent on the taxable property in the county, and to appropriate the same to the purchase of land, not exceeding the aforesaid six hundred and forty acress, and to erect and furnish buildings suitable for a poor-house, and to put in operation and to defray the actual expenses of said poor-house, should the labor of the inmates be inadequate thereto.

3275. Said county commissioners are hereby authorized to appoint and employ such **agents** and other persons as may be necessary to establish and put into operation such poor-house.

8276. Whenever the county commissioners of any county shall enter upon their records that they have established a poor-house, and that said poor-house is ready for the reception of the poor of said county, then the **authority** conferred upon the **overseers** of the poor shall **cease** to be in force in said county; *Provided, however,* That if there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records.

3277. The **title of** the **property** authorized to be acquired by this chapter for the purpose of said poor-house shall be made to the county.

3278. The county **commissioners** of any county in this state may, at any regular meeting, if they at any time shall deem it to the interest of said county, **appropriate** out of any fund appropriated to said county for any purpose, or other money belonging to said county, any sum not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor-house for said county, as contemplated in sections seventeen, eighteen, and nineteen of this chapter [3272–4].

County commissioners may provide poor-house by purchase, but cannot give notes secured by mortgage in payment. **2,** 185. See **19,** 724 (28 N. W., 276.

CHAPTER 42.—PUBLIC HEALTH.

Secs. 3279 to 3297. "An act to establish a **state board of health** to regulate the practice of medicine in the state of Nebraska," etc. 1891, p. 280. In force July 4. (Repealed ch. 63, Laws 1891, p. 282, as amended 1883, p. 246.)

3279. There shall be established in the state of Nebraska a board to be styled the state board of health. Said **board** shall **consist** of the governor, attorney-general, and superintendent of public instruction, and the governor shall be ex-efficio chairman of said board.

3280. Said **board** shall **meet** upon the call of the governor and within thirty days after the approval of this act, and shall meet thereafter as often and at such times as the governor may from time to time designate.

3281. Said board shall within sixty days after the approval of this act appoint four **secretaries,** who shall be graduated physicians of at least seven years' consecutive practice, and who shall be at the time of their appointment actually engaged in practice in the state of Nebraska; one of whom shall be appointed for the **term** of one year, one for the term of two years, one for the term of three years, and one for the term of four years, and thereafter it shall be the duty of said board to appoint or reappoint one secretary every year as the term of those heretofore appointed shall expire, but each secretary shall continue in office until his successor shall have been so appointed. Said appointments shall be made so that of said secretaries two shall be physicians of the so-called regular school, one of the so-called eclectic school, and one of the so-called homeopathic school.

3282. Said **secretaries** shall have **power** and it shall be their **duty** to assist and advise said board in the performance of its duties as prescribed by this act, to summon witnesses and take testimony in the same manner as witnesses are summoned and depositions taken under the Code of Civil Procedure, and to report said testimony to the board, together with their findings of fact and recommendations on all matters coming before said board requiring evidence for their determination, except as hereinafter provided.

3283. It shall be the **duty of** said **board** to see that all the provisions of this act are strictly enforced, to grant certificates as herein provided, and to cause to be prosecuted all violations of this act. Said board shall have and use a common **seal** and may make and adopt all necessary **rules,** regulations, and by-laws not inconsistent with the constitution and law of this state or of the United States, to enable it to perform its duties and to transact its business under the provisions of this act.

3284. A majority of said board shall constitute a **quorum** for the transaction of business.

3285. It shall be unlawful for any person to practice medicine, surgery, or obstetrics, or any of the branches thereof, in this state, without having first obtained and registered the **certificate** provided for by this act; and no person shall be entitled to the certificate herein provided for unless he shall be a graduate of a legally chartered medical school or college in good standing; said qualifications to be determined by the board; *Provided, however,* That nothing in this act shall be construed to prevent physicians residing in other states from visiting patients in consultation with resident physicians who have complied herewith.

3286. The term **medical school** or college in good standing shall be **defined** as follows: A medical school or college requiring a preliminary examination for admission to its courses of study, and which requires as requisite for the granting the degree of M. D. attendance on at least three courses of lectures of six months each, no two of said courses to be held within one year, and having a full faculty of professors in all the different branches of medical education, to-wit: anatomy, physiology, chemistry, toxicology, pathology, hygiene, materia medica, therapeutics, obstetrics, gynecology, principle and practice of medicine, and surgery, and clinical instruction in the last two named; *Provided*, That this three-year clause shall not apply to degrees granted prior to July, 1891.

3287. It shall be the duty of all persons intending to practice medicine, surgery, or obstetrics in the state of Nebraska, before beginning the practice thereof in any branch thereof, to present his **diploma** to said board, together with his **affidavit** that he is a lawful possessor of the same, that he has attended the full course of study required for the degree of M. D., and that he is the person therein named. Such affidavit may be taken before any person authorized to administer oaths, and the same shall be attested under the hand and official seal of such official if he has a seal, and any person swearing falsely in such affidavit shall be guilty of perjury and subject to the penalty therefor.

3288. If upon investigation of said diploma and affidavit the **applicant** shall be found **entitled to practice,** there shall be issued to said applicant the certificate of said board under its seal and signed by its secretaries stating such fact, and it shall be the duty of the applicant before practicing to file such certificate or a copy thereof in the office of the county clerk of the county in which he or she resides or in which he or she intends to practice; such **certificate** or copy shall be **filed** by the county clerk and by him recorded in a book to be kept for that purpose, properly indexed, to be called the "Physician's Register," and for such services the county clerk shall receive from the applicant the same fees as are allowed to the register of deeds for the recording of conveyances.

3289. All **physicians** who shall be **engaged in practice** at the time of the passage of this act shall, within six months thereafter, present to said board their diplomas and affidavits as hereinbefore provided, or in the case of persons not graduates who were entitled to registration and practice under the provisions of the act entitled "An act to regulate the practice of medicine in the state of Nebraska," approved March 3d, 1881, an affidavit showing them to have been entitled to so register and practice, and a certified transcript of their registration under said act, and upon their doing so shall be entitled to the certificate herein provided, which they shall file with the county clerk as herein provided; *Provided*, That no one having the qualifications required in and having complied with said act of March 3, 1881, shall be liable to prosecution for failure to comply with this act until the expiration of said period of six months.

3290. It shall be the duties of said **secretaries** to keep a full **record** of all the acts and proceedings of said board and of all certificates granted thereby, together with the proof upon which certificates are granted; but when said proof in any case shall have been on file in the office of said board for ten days, said certificate may be issued by said secretaries without a vote of the board, if no protest has been filed and if in their opinion said proof complies with the provisions of this act.

3291. **Any person who** shall have obtained a **certificate** provided by this act and shall remove to another county shall, before entering upon the practice of his profession in such other county, cause said certificate to be filed and recorded in the office of the county clerk of the county to which he has **removed.**

3292. The board may **refuse** certificates to persons guilty of unprofessional or dishonorable conduct, **and** it may **revoke certificates** for like cause; *Provided* *always*, That they have given the person an opportunity to be heard in his or her defense.

3293. **No person** shall **recover** in any court in this state any sum of money whatever **for** any **medical,** surgical, or obstetrical **services, unless** he shall have complied with the provisions of this act and is one of the persons authorized by this act to be **registered** as a physician.

3294. Any **person not possessing** the **qualifications** for the practice of medicine, surgery, or obstetrics required by the provisions of this act, or any person who has not complied with the provisions of this act who shall engage **in** the **practice** of medicine, surgery, or obstetrics, or any of the branches thereof, in this state, shall be deemed guilty of a **misdemeanor,** and on conviction thereof shall be fined in any sum not less than fifty dollars ($50) nor more than three hundred dollars ($300), and costs of prosecution for each offense, and shall stand committed until such fine and costs are paid.

See on complaint, **21,** 447 (32 N. W., 222). On qualifications, **17,** 140 (22 N. W., 348).

3295. Any person shall be regarded as **practicing medicine,** within the meaning of this act, who shall operate on, profess to heal or prescribe for, or otherwise treat any physical or mental ailment of another. But nothing in this act shall be construed to prohibit gratuitous services in case of emergency, and this act shall not apply to commissioned surgeons in the United States army and navy, nor to nurses in their legitimate occupations, nor to the administration of ordinary household remedies.

3296. Any itinerant **vendor** of any **drug,** nostrum, ointment, or appliance of any kind intended for the treatment of any disease or injury, or who shall by writing, printing, or any other method, publicly profess to cure or treat diseases, or injury, or deformity, by any drug, nostrum, manipulation, or other expedient, shall be deemed **guilty** of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty dollars ($50) nor more than one hundred dollars ($100), or be imprisoned in the county jail for a period of not less than thirty (30) days nor more than three (3) months, or both, in the discretion of the court, for each offense.

3297. The **secretaries** of said board of health shall receive for their services the sum of five dollars ($5), to be paid by every applicant for a certificate hereunder at the time of making his application, and for their services for the taking of testimony the same **fees** as are provided for notaries public for similar services, and they shall receive no other fees or compensation; *Provided*, That applicants under section 11 of this act [3289] shall pay the sum of one dollar ($1) only.

Secs. 3298 to 3301. "An act legalizing **dissections** and for other purposes." 1883, p. 244. In force February 20.

3298. That it shall be lawful to carry on **dissections** of the human body for scientific, educational, and legal purposes within the state of Nebraska under the restrictions hereinafter provided in this act.

3299. The **bodies of** all **paupers** dying within this state, whose persons are unclaimed after death by any relatives or friends for the purpose of interment, shall be turned over to any legally organized medical college or any physician or surgeon authorized under the laws of this state to practice therein, under the conditions contained in section three of this act.

3300. Any **medical college,** through its president, dean, or secretary, or any surgeon authorized to practice in this state, may **procure** the **body** or bodies of deceased paupers, whose bodies are unclaimed by relatives or friends for interment, by filing an application therefor, accompanied by a **bond** in the penal sum of five hundred dollars binding the applicant to procure, convey, and dissect the body or bodies applied for in a manner that shall be private and in no wise shock the sensibilities of the community where such body is procured, conveyed, or dissected, and the applicant shall state in said application that the body or bodies is or are required for scientific investigation, or for educational purposes. Upon making such application to the county clerk of any court [county] in this state where such pauper or paupers may be, and filing such bond with said county **clerk**, he shall **issue** his **order**, under this act, to the properly authorized officer of the county having charge of said pauper's body or bodies, to turn the same over to the party or parties above named, who have made application therefor.

3301. **No bodies** applied for in accordance with the provisions of this act shall be **transported** or used outside the limits of this state. Any one violating the provisions of this act shall upon conviction thereof before any tribunal authorized to try such offense, be fined not less than one hundred dollars, and not more than three hundred dollars, or shall be imprisoned in the county jail not less than one month nor more than six months.

Secs. 3302 to 3307. "An act to regulate the **practice of dentistry**, and to punish violation thereof." 1887, p. 504. In force July 1.

3302. It shall be unlawful for any person or persons to practice dentistry or dental surgery in the state of Nebraska without first having received a **diploma** from a reputable dental college or university duly incorporated or established under the laws of some one of the United States or some foreign government; *Provided*, That nothing in section one of this article shall apply to any *bona fide* practitioner of dentistry or dental surgery in this state at the time of the passage of this act; *And provided*, That nothing in this act shall be so construed as to prevent physicians or surgeons from extracting teeth.

3303. Every person who shall hereafter engage in the practice of dentistry or dental surgery in this state shall **file** a copy of his or her **diploma** with the county clerk of the county in which he or she resides, which copy shall be sworn to by the party filing the same, and the clerk shall give **certificate** of such fact, with the seal of the county attached thereto, to such party filing the copy of his or her diploma, and shall file and register the name of the person, the date of the filing, and the nature of the instrument, in a book to be kept by him for that purpose, and as a compensation for his services the said clerk, for filing and registering the same, shall receive a **fee** of one dollar ($1), to be paid by the person filing the diploma.

3304. Every *bona fide* **practitioner** of dentistry or dental surgery residing in this state at the time of the passage of this act, and desiring to continue the same, shall, within ninety days after the passage of this act, file an **affidavit** of said facts as to the length of time he or she has practiced in this state, with the county clerk of the county in which he or she resides, and the said clerk shall register the name of, and give a **certificate** to, the party filing the affidavit in like manner and of like effect as hereinbefore provided, and for such service shall receive a fee of one dollar ($1), to be paid by the party filing the affidavit.

3305. All **certificates** issued under the provisions of this act shall be *prima facie* **evidence** of the right of the holder to practice under this act.

3306. Every person **violating** the provisions of this **act** shall, upon conviction thereof, be deemed guilty of misdemeanor and be punished by a fine of not less than fifty dollars ($50), nor more than two hundred dollars ($200), for each and every offense, or be imprisoned in the county jail for sixty (60) days, or both fine and imprisonment, at the discretion of the court, and all fines collected shall belong to and be paid into the common school funds of the county where the offense was committed.

3307. Any **person** who shall have filed his or her affidavit or diploma, as required in sections two (2) and three (3) of this act [3303–4], in one county and **remove** to another county shall, before entering upon the practice of his or her profession in such last named county, procure a certified **copy of** the **record** of his or her former registry, and cause such transcript to be filed and recorded in the dental register of such county in which he or she has removed.

Secs. 3308 to 3319. "An act to regulate the practice of pharmacy and sale of poisons and prevent adulteration in drugs and medicinal preparations in the state of Nebraska, and provide a penalty therefor." 1887, p. 507. In force March 24.

3308. There shall be established in the state of Nebraska a board to be styled the Nebraska State **Board of Pharmacy.** Said board shall consist of the attorney general, secretary of state, auditor, treasurer, and commissioner of public lands and buildings, and said board shall appoint five (5) examiners, or secretaries, who shall be skillful retail apothecaries of seven (7) years' practical experience, actually engaged in said business in the state of Nebraska; and said secretaries shall assist said board in conducting all examinations hereinafter provided for, and in the performance of any of its duties; each of said secretaries shall receive a compensation of five dollars ($5) per day for each day's service actually and necessarily performed, and such necessary expenses as shall be audited and found just and reasonable by said board, for attending the meetings thereof; said secretaries or examiners to be selected from ten (10) practical pharmacists, recommended by the Nebraska State Pharmaceutical Association; *Provided*, That all such services and expenses, and all the necessary expenses of said board, shall be paid out of the moneys received by said board for fees. All moneys received in excess of said per diem allowance, and other expenses above provided for, shall be paid into the state treasury at the end of each year, and so much thereof as shall be necessary to meet the current expenses of said board shall be subject to the order thereof, if, in any year, the receipts of said board shall not be equal to its expenses. The board shall make an annual report and render account to the state auditor and to the Nebraska State Pharmaceutical Association of all moneys received and disbursed by it pursuant to this act, and the state of Nebraska shall in no case be liable for any such compensation or expenses; *And provided further*, That said board shall have the power to discharge any of said secretaries at any time and to fill any vacancy in the position of secretary whenever, from any cause, such vacancy exists.

3309. The said **board** of examiners shall within 30 days after its appointment meet and **organize** by the election of a president, secretary, and treasurer from its own members, who shall be elected for the term of one year and serve until their successors are elected and qualified, and shall perform the duties prescribed by the board. It shall be the **duty** of the board to examine all applications for registration submitted in proper form; to grant certificates of registration to such persons as may be entitled to the same under the provisions of this act; to investigate complaints when properly presented, and to cause the prosecution of all persons violating its provisions; to report annually to the governor and to the Nebraska State Pharmaceutical Association upon the condition of pharmacy in the state, which said report shall also furnish a record of the proceedings of the said board for the year, and also the names of all pharmacists registered under this act. The board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties at least four times a year; said meetings to be held on the second Wednesday in February, May, August, and November in each year; and shall make by-laws for the proper fulfillment of its duties; and shall keep a book of registration, in which shall be entered the names and places of business of all persons registered under this act, which book shall also specify such facts as said persons shall claim to justify their registration. The record of said board, or copy of any part thereof, certified by the secretary to be a true copy, attested by the seal of the board, shall be accepted as competent evidence in all courts of the state. Three members of said board shall constitute a quorum. The president of said board of examiners shall retire from said board each year and cease to be a member of the said board of examiners at the expiration of his term of office. The Nebraska State Pharmaceutical Association shall annually select three pharmacists, from which number the Nebraska State Board of Pharmacy shall select one to fill vacancy occurring each year.

Rewritten 1889, p. 560.

3310. Every person who shall, within three (3) months after the passage of this act takes effect, forward to the board of pharmacy satisfactory proof, supported by his affidavit, that he was engaged in the business of a dispensing **pharmacist** on his own account in this state at the time this act takes effect, in the preparation of physicians' prescriptions, or that at such time he had been employed or engaged three (3) years or more as a pharmacist in the compounding of physicians' prescriptions, and was at said time so employed in this state, shall, upon the payment to the board of a fee of two dollars ($2), be granted the certificate of registered pharmacist; *Provided*, That in case of failure or neglect to register as herein provided, such person or persons shall, in order to be registered, comply with the requirements provided for registration as a licentiate in pharmacy hereinafter described.

3311. No person other than a licentiate in pharmacy shall be entitled to registration as a pharmacist except as provided in section 3. **Licentiates** in pharmacy in the meaning of this act shall be such persons, not less than eighteen years of age, who shall have had not less than three years' practical experience in pharmacy, and who shall have passed a satisfactory examination touching their competency before the board of examiners. Every such person shall, before examination is granted, furnish satisfactory evidence that they are of temperate habits, and pay to the board a fee of five dollars; *Provided*, That in case of the failure of any applicant to pass a satisfactory examination, the money shall be held to his credit for a second examination at any time within a year. The said board may grant certificates of registration without further examination to the licentiates of such other boards of pharmacy and graduates of such colleges of pharmacy as it may deem proper upon payment of a fee of five dollars ($5) *which shall be good only until the first regular meeting of the board thereafter. Licentiates in pharmacy shall at the time of passing their examination be registered by the secretary of the state board of examiners as registered pharmacists.

Amended, and all after * added 1889, p. 562.

3312. [**Fees.**]—Assistants who have held a certificate of registration in this state for two consecutive years, may, upon application to the board of examiners, be granted a certificate as a registered pharmacist by paying a **fee** of three dollars; *Provided*, That the applicant has been continually in the practice of pharmacy for two years next succeeding his registration as an assistant.

Rewritten 1889, p. 562.

3313. Every registered pharmacist who desires to continue the practice of his profession shall annually after the expiration of the first year of his registration during the time he shall continue in such practice, on or before the 24th day of March of each year, pay to the said board a registration fee of two dollars ($2), for which he shall receive a **renewal of** said **registration.** Every person receiving a certificate under this act shall keep the same conspicuously exposed in his place of business. Every registered pharmacist shall, after changing his place of business or employment, as designated by his certificate, notify the secretary of the board of his new place of business. If any pharmacist shall fail or **neglect** to procure his annual registration or comply with the other provisions of this section, his right to act as such pharmacist shall cease at the expiration of ten days from the time of notice of such failure to comply with the provisions of this section shall have been mailed to him by the secretary of said board, *and such pharmacist shall be barred from the practice of pharmacy until he shall have made application and passed the examination provided for in section four of this act.

Amended and all after * added, 1889, p. 563.

3314. Any registrations obtained through **false representations** shall be void, and the board of pharmacy may hear complaints and evidence, and may revoke such certificates as it may deem improperly held.

3315. Any **proprietor of a pharmacy** who, not being a registered pharmacist, shall fail or neglect to place in charge of such pharmacy a registered pharmacist, or any such proprietor who shall by himself or any person permit the compounding or dispensing of prescriptions or the vending of drugs, medicines, or poisons in his store or place of business, except by or in the presence of, or in and under the supervision of a registered pharmacist; or any person not being a registered pharmacist who shall take charge of or act as manager of such pharmacy or store, or who, not being a registered pharmacist, shall retail, compound or dispense drugs, poisons or medicines of any kind, or any person violating any provisions of this act to which no other penalty is herein attached, shall be deemed guilty of a **misdemeanor,** and for every such offense, and upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or shall be imprisoned not less than ten days nor more than ninety days; * *Provided,* That nothing in this act shall be constructed so as to prohibit a registered pharmacist from taking an apprentice to learn the business of pharmacy.

Amended and all after * added 1889, p. 564.

3316. Nothing in this act shall prevent any wholesale or retail dealers in any business from selling any **patent** or proprietary **medicines,** nor any resident registered physician from dispensing his own medicines or his own prescriptions.

3317. No person shall add to or remove from any drug, medicine, chemical or pharmaceutical preparation any ingredient or material, for the purpose of **adulteration** or substitution, which shall deteriorate the quality, commercial value, or medical effect, or which shall alter the nature or composition of such drug, medicine, chemical or pharmaceutical preparation, so that it will not correspond to the recognized tests of identity or purity. Any person who shall thus willfully adulterate or alter, or cause to be adulterated or altered, or shall sell or offer for sale any such drug, medicine, chemical or pharmaceutical preparation, or any person who shall substitute or cause to be substituted one material for another, with the intention to defraud or deceive the purchaser, shall be guilty of a **misdemeanor** and be liable to prosecution under this act. If convicted, he shall be liable to all the costs of the action, and for the first offense be liable to a fine of not less than ten dollars ($10) or more than one hundred dollars ($100), and for each subsequent offense a fine of not less than twenty-five dollars ($25) or more than one hundred dollars ($100). On complaint being entered, the board of pharmacy is hereby empowered to employ an analyst or chemist, whose duty it shall be to examine into the so-called adulteration, substitution, or alteration, and report upon the result of its investigation, and if the said report shall be deemed to justify such action, the board shall duly cause the prosecution of the offender, as provided in this act.

3318. All **suits for** the recovery of the **penalties** prescribed in this act shall be **prosecuted** in the name of the state of Nebraska in any court having jurisdiction, and it shall be the duty of the prosecuting attorney of the county where such such offense has been committed to prosecute all persons violating the provisions of this act, upon proper complaint being made to them.

3319. The **pharmacist** of every house dispensing and compounding medicines, registered under this act, shall be **exempt** and free from all jury duty in the courts of this state.

Secs. 3320 to 3333. "An act to provide for the organization of sanitary districts and to define their powers." 1891, p. 278. In force July 4.

3320. That whenever one or more **municipal corporations** may be situate upon a stream which is bordered by lands subject to overflow from natural causes, or which is obstructed by dams or artificial obstructions so that the natural flow of waters is impeded, so that drainage or the improvement of the channel of such stream will conduce to the preservation of the public health, such municipal corporation or corporations and the surrounding lands deleteriously affected by the condition of the stream may be **incorporated as** a **sanitary** drainage **district** under this act in the **manner** following: Any one hundred (100) legal voters, freeholders resident within the limits of such proposed sanitary district, may petition the county board of the county wherein they reside, to cause the question to be submitted to the legal voters whether they will organize as a sanitary district under this act; such petition shall contain a definite description of the territory intended to be embraced in such district according to government survey, and the name of the proposed district; but no lands not included within any municipal corporation, or within three miles thereof, shall be included in any sanitary district, nor shall any lands not within an incorporated town be included within any sanitary district, unless the same be within three miles of the channel of such stream or of the area of lands subject to its overflow. Upon the filing of such petition in the office of the county board it shall give notice in one or more newspapers daily, if there be a daily paper in said county, during twenty (20) days prior to such meeting, of the time and place where the petition will be heard. At the time so fixed the board shall meet, and all persons in such proposed sanitary district shall have opportunity to be heard touching the location and boundary of the proposed district; and thereupon the county board shall by an order determine the boundaries of such district, whether described in such petition or otherwise. After such determination by the county board, or a majority of them, they shall call a special election and submit to the legal voters of the proposed sanitary district the question of the organization of such district, and notice in a daily paper, if there be one, shall be given of such election twenty days prior thereto. At such election each legal voter resident within the proposed sanitary district shall have a right to cast a ballot with the words thereon, "For Sanitary District," or "Against Sanitary District," and the ballots cast shall be received, returned, and canvassed in the manner as upon county elections, and the result shall be entered of record, and if a majority of the votes cast be in favor of the proposed district, such proposed district shall be deemed an organized sanitary district under this act.

3321. On the **organization** of any sanitary district the county board shall call an election for the election of three **trustees**, who shall hold their offices until their successors are elected and qualified, and annually at the November election in each year there shall be elected one trustee. At the first meeting after election of one or more members, the board shall elect one of their number president, and in case they fail to elect, then the member who at his election received the highest number of votes shall be president of such board. Such **district** shall **be a body** corporate and politic by name of "Sanitary District of ——," with power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

3322. The board of trustees shall elect one of their members **clerk**, and shall have power to appoint, employ, and pay an **engineer**, who shall be removeable at pleasure. The clerk may be paid by said board not to exceed three hundred dollars ($300) per year. The board shall have power to pass all necessary **ordinances**, orders, rules and regulations for the necessary conduct of their business and for carrying into effect the objects for which such sanitary district is formed.

3323. The board of trustees of any sanitary district organized under this act shall have power to provide for the **drainage** of such district by laying out, establishing, maintaining, and constructing one or more channels, drains or ditches for carrying off and disposing of the drainage and sewerage of such district in a satisfactory manner, and for such purpose to straighten, widen, or deepen the channel of any stream, or remove any dam, so as to quicken and improve the flow of any stream or effect satisfactory and efficient drainage.

3324. Such sanitary **district** may **acquire** by purchase, consideration, or otherwise, real or personal **property**, right of way, and privilege, within or without its corporate limits, necessary for its corporate purposes.

3325. Such district may **borrow money** for corporate purpose and issue bonds therefor, at not more than six (6) per centum interest, but it shall not become indebted in any manner or for any purpose to an amount in the aggregate in excess of four (4) per centum of the assessed valuation of property in said district for county purposes.

3326. At the time or before incurring any **bonded indebtedness** the question shall be submitted to the people in the manner provided by law in cases of borrowing money for internal improvements.

3327. All **contracts** for work to be done, the expense of which is more than five hundred ($500) dollars, shall be let to the lowest responsible bidder, upon notice of not less than twenty days of the terms and conditions of the contract to be let, and they shall have power to reject any and all **bids** and re-advertise for the letting of such work.

3328. The board of trustees may levy and collect annually **taxes** for corporate purposes upon property within the limits of such sanitary district, to the amount of not more than five (5) mills of the valuation as assessed for state and county purposes, and shall on or before the first day of August in each year certify the same to the county clerk, who shall extend the same upon the county tax list, and the same shall be collected by the county treasurer in the same manner as state and county taxes, and the county treasurer shall disburse the same on warrants of the board of trustees, and in respect to such fund the county treasurer shall be ex-officio treasurer of the sanitary district.

3329. The board of trustees shall have power to defray the **expenses** of any improvement made by it in the execution of the powers hereby granted, by special assessment, or by general taxation, or partly by special assessment and partly by general taxation as they may by order determine. It shall constitute no defence to any tax or special assessment that the improvement for which the same is imposed lies partly outside the limits of such district. No property shall be specially assessed more than it is benefited by the improvement for which the assessment is levied. The proceedings for imposing of special assessment by said board shall be, as near as may be, according to those for special assessments by the mayor and council under the act governing cities of the first class.

3330. Where any **special assessment** is made under this act, the order making such assessment may provide that it be divided into equal annual installment,* not more then twenty in number, with interest at seven per cent, payable on the whole amount unpaid annually with the installment that year falling due, and in such case the several installments of principal and interest shall be collected and payment enforced in the same manner as delinquent taxes; and sale of the land for a delinquent installment shall not be a discharge of the premises from installments subsequently to fall due; *Provided, however,* In case of special assessments, the owner of the premises may pay the entire assessment imposed at any time within ninety days after such special assessment is made.

3331. Whenever the board of trustees of any sanitary district shall by order determine to make any public improvement under this act which shall require that **private property** be **taken** or damaged, the district may cause the **damage** therefor to be ascertained as nearly as may be according to the provisions of law for appropriation of right of way by railway companies.

3332. When it shall be necessary, in making any improvement under this act, to enter upon or cross any state or **public lands,** the district shall have the right of way over the same, by filing a plat of such lands and of its proposed improvements with the commissioner of public lands and buildings.

3333. In the making of any **special assessment** for any improvement which requires the taking or damage of property, the cost of acquiring the right to take or to damage such property may be estimated and included in the assessment as a part of the cost of making such improvement. And in the event that any tax or assessment levied by such trustees is by any court annulled for informality or irregularity, the same may by the said board be reassessed and reimposed upon the same property, or other property, as may be equitable.

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* So in original.

CHAPTER 43.—PUBLIC INSTITUTIONS.

CHARITABLE—PENAL—REFORMATORY.

NOTE.—In this chapter, all provisions of temporary application, such as those for the erection of buildings, etc., are omitted.

Secs. 3334 to 3338. "An act to regulate the **purchase of supplies** for the public institutions and the executive departments of the state." 1877, p. 199. In force June 1.

3334. That all purchases and **contracts for supplies** for any of the departments and public institutions of the state, where the public exigencies do not require the immediate delivery of the articles, shall be by advertising a sufficient time previously for proposals for supplying the same.

3335. At least one month previous to the first day of January, April, July, and October respectively in each year, a **board,** consisting of the governor, commissioner of public lands and buildings, secretary of state, treasurer, and attorney general, shall meet with the warden of the state prison, and the superintendent of each of the asylums or other institutions furnished by the state, and determine the **supplies** that may be necessary for three months, except articles as may be perishable and cannot be kept. Said board shall designate clearly the quantity and quality of the articles, and shall then advertise for ten days in some newspaper published at the capital, having general circulation in the state, before the first day of January, April, July, and October respectively, for proposals for furnishing said articles and for each institution separately, to be delivered at the institution within ten days after the first day of the month aforesaid; *Provided,* That the board may permit the delivery of the goods monthly, if in their judgment it be deemed best. And the **bids** which propose to furnish the supplies for either institution at the lowest rate, shall be received for such institution; *Provided, further,* That no proposal shall be considered by said board unless the same is accompanied by a bond, with such security as the board may determine, with condition to furnish said articles as proposed in said bid.

3336. **[Other supplies.]**—All supplies for such institutions not purchased as provided in this act, shall be purchased in such manner as shall be directed by said board by written instruction.

3337. The head of each of the executive departments respectively shall **advertise** for proposals for supplying the departments in accordance with the provisions of this act.

3338. All **vouchers for supplies,** having been examined and approved by said board or the head of the department, as the case may be, shall be approved by the secretary of state, and thereupon the auditor of state shall draw his warrant upon the treasurer for the amount.

I. CHARITABLE INSTITUTIONS.

Sec. 3339. "An act providing for **furnishing clothing** to certain inmates of public charitable institutions." 1875, p. 177. In force February 24.

3339. That whenever any person who may be an **inmate of** the Nebraska state institute for the deaf and dumb, or any other **public** charitable **institution** shall be **unable** to provide suitable clothing for himself or herself, and shall have no parent or legal guardian able and legally bound so to do, it shall be the duty of the county commissioners of the county where such person last resided, before entering or applying for admission into such institution, to adjudge and declare such person a pauper, and thereupon the proper **officers** of such institution shall **provide** suitable clothing for such person, and send the bill thereof to the aforesaid county commissioners, who shall forthwith audit and allow the same and cause a warrrant therefor to be drawn upon the general fund of such county in favor of said officers of such institution.

Secs. 3340 to 3350. "An act to erect and maintain an **institution for the blind.**" 1875, p. 149. In force February 19.

3340. The **trustees** shall have the general supervision of the institution, adopt rules for the government thereof, provide teachers, servants, and necessaries for the institution, and perform all other acts necessary to render the institution efficient, and to carry out the purposes of the establishment.

3341. The board of trustees shall fix the **compensation of** all the **officers** and employees of said institution at such a rate as shall by them be deemed just and equitable; *Provided*, That in no event shall the total amount of expenses of the institution exceed the total amount of the appropriation for the same.

3342. The **assistant officers** shall receive their appointment from the board, upon the nomination of the principal, for the faithful performance of their duties, and the principal shall be held responsible to the board for the performance of his duties.

3343. **Persons not residents** of the state shall be entitled to the benefits of this institution on paying to the treasurer thereof the sum of fifty dollars quarterly in advance; *Provided*, That no such person shall be so **received** to the exclusion of any resident of this state.

3344. The board of trustees shall not create any **indebtedness** against the institution exceeding the amount appropriated by the legislature for the support thereof.

3345. To meet the **ordinary expenses** of the institution, including furniture, books, and maps, the compensation of principal, matrons, teachers, and employees, and to provide for contingencies, there is hereby appropriated the sum of two thousand dollars annually, or so much thereof as may be necessary, to be drawn quarterly, and then only as necessary to meet the wants of the institution.

3346. For the purpose of meeting **current expenses,** there is appropriated out of the state treasury, or so much as necessary, not to exceed forty dollars per quarter to each pupil in said institution; *Provided*, That such amounts shall be drawn by warrants upon the temporary school fund of the state.

3347. The **principal** of said institution shall **report** to the governor, on or before the fifteenth day of December preceding each regular session of the legislature, the number of pupils in attendance, with the name, age, sex, residence, place of nativity, and also the cause of blindness of each pupil. He shall also make a report of the studies pursued and trades taught in said institution, together with a complete statement of the expenditure, and also the number, kind, and value of articles manufactured and sold.

3348. When the **pupils** of such institution are not otherwise supplied with **clothing,** they shall be furnished by the principal, who shall make out an **account** of the cost thereof in each case against the parent or guardian, if the pupil be a minor, and against the pupil, if he or she have no parent or guardian, or have attained the age of majority, which account shall be certified to be correct by said principal, and when so certified, such an account shall be presumed correct in all courts. The principal shall thereupon remit said accounts by mail to the treasurer of the county from which the pupil so supplied shall have come to said institution. Such treasurer shall proceed at once to collect the same by suit, in the name of his county, if necessary, and pay the same into the state treasury. The principal shall at the same time remit a duplicate of such account to the auditor of state, who shall credit the same to the account of the institution, and charge it to the proper county; *Provided*, If it shall appear by the affidavit of three disinterested citizens of the county, not of kin to the pupil, that the said pupil, or his or her parents, would be unreasonably oppressed by such suit, then such treasurer shall not commence said suit, but shall credit the same to the state on his books and report the amount of such account to the board of county commissioners of his county, and the said board shall levy sufficient tax to pay the same to the state, and to cause the same to be paid into the state treasury.

3349. The above appropriations, including account of clothing furnished pupils, shall be drawn monthly in advance, upon orders of the president and treasurer of said board of trustees, made on the auditor of the state, which said order shall recite the amount of funds then in the hands of the treasurer of said board, and the amount necessary to defray the expenses of the ensuing month, and thereupon the auditor shall draw his warrant on the state treasurer in favor of the treasurer of said board for the amount so shown to be necessary for the said monthly expenses of said institution.

3350. All blind persons resident of this state, of suitable age and capacity, shall be entitled to an education in this institution, at the expense of the state. Each county superintendent of common schools shall report to the principal of the institution for the blind, on the first day of April of each year, the name, age, residence, and postoffice address of every blind person, and every person blind to such an extent as to be unable to acquire an education in the common schools, and who reside in the county in which he is superintendent.

Secs. 3351 to 3359. "An act to provide for the government of the institute for the deaf and dumb and for other purposes. 1875, p. 146. In force February 23. (Secs. 1, 2, 5 and 6 of this act, relating to a board of directors of the institute, appear to have been abrogated by sec. 19, art. V, constitution, and by the act of 1877, p. 188, and are omitted herefrom.

3351. No director, officer, or agent of the institute shall be interested in any contract with the corporation, nor in the changing or exchanging of commodities of any kind whatever, nor shall any director be employed in or appointed to any office or place of emolument in said institution.

3352. The said directors are vested with power to appoint or employ, and remove or discharge at pleasure, a principal, matron, teacher, and agents necessary to the successful operation of the institution, and prescribe and regulate their duties, and to fix the salaries or compensation of each.

3353. To enable the said directors to execute the provisions of this act, they are authorized to receive, have, hold, and use property of every description, as well as money from any county or corporation, or from any person desiring to aid in sustaining the institution; *Provided*, That whatever may be conveyed or donated, as aforesaid, shall be used as directed by the grantor, or donor, if accepted, and for no other purpose.

3354. The object of said institution shall be to promote the intellectual, physical and moral culture of the deaf and dumb, by a judicious and well adapted course of instruction, that they may be reclaimed from their lonely and cheerless condition, restored to society, and fitted for the discharge of the duties of life.

3355. All the deaf and dumb residing in Nebraska, of suitable age and capacity to receive instruction, shall be admitted into and enjoy the benefits of said institution without charge.

3356. All **moneys** in the hands of the treasurer of said institution shall be **payable** only upon order of the board.

3357. The **treasurer** and **principal** shall make annual **reports** to the board of directors, who shall examine the same at the first meeting held in each year, as provided for in this act.

3358. Within ten days preceding the meeting of each regular session of the legislature, the said **board** shall furnish to the governor a printed **report** of the action of the board and an estimate of the expenses of the institution in all its departments, together with a statement of the receipts and disbursement of funds; and during the first week of the session of the legislature at least ten copies of said report shall be delivered to each member thereof. The said report shall show: *First*—The names of the president and directors, secretary and treasurer, and of the principal and teachers employed, with the compensation allowed to each. *Second*—The names, age, and residences of the pupils and the dates of their reception into the institution. *Third*—The names, age, and residences of deaf mutes ascertained to be in the state, which have not attended the school. *Fourth*—The names and residences of all other persons in the service of the institute, and their business and compensation. *Fifth*—The statement of the accounts of the institute, showing the amounts of money received and the dates thereof, and its disbursements.

3359. All **rights** inuring to, and all obligations incurred and contracts made by the corporation, incorporated under an act entitled "An act to incorporate an institute for the deaf and dumb," approved February 7, 1867, are hereby declared to be **vested** in and assumed by the state of Nebraska.

Secs. 3360 to 3367. "An act to establish and endow an **asylum home for feeble minded children** and adults, at or near the city of Beatrice, Nebraska, and making appropriation and levy therefor." 1885, p. 255. In force March 5.

3360. That there shall be established in the **state** of Nebraska an institution to be known and designated as the Nebraska Institution for **Feeble Minded** Youth.

3361. Besides shelter and protection, the prime **object** of said institution shall be to provide special means of improvement for that unfortunate portion of the community who were born or by disease have become imbecile or feeble minded, and by a wise and well adapted course of instruction reclaim them from their helpless condition, and, through the development of their intellectual faculties, fit them as far as possible for usefulness in society. To this end there shall be furnished them such agricultural and mechanical education as they may be capable of receiving.

3362. The board shall appoint a **superintendent**, who shall be a physician, and before entering upon the discharge of his duties shall give bond to the state of Nebraska in the sum of ten thousand dollars ($10,000), with sureties, to the satisfaction of the board, for the faithful performance of his duties. He shall have control of the institution under direction of the board, and in accordance with the rules and regulations by them established. The board shall, upon the nomination of superintendent, appoint a matron, and shall have power to remove either of them for cause. All teachers and other employees shall be appointed by the superintendent, with the advice and consent of the board, and may be discharged by him or by the board. The compensation of all officers and employees of said institution shall be fixed by the board.

3363. The superintendent shall keep a **record** of the name, date of admission, nativity, residence, age, and sex, the condition on admission, date of discharge, together with the result of treatment and training **in each** individual **case** during their residence in the institution, and shall make reports to the governor as required by statute. The superintendent shall be chargeable with all property belonging to the institution, and shall keep a complete account of all the receipts and disbursements authorized by the board.

3364. All imbecile or feeble minded children and youth between the ages of five (5) and eighteen (18) years, who have been resident of the state for the six months that preceeded an application for admission, and who are incapable of receiving instruction in common schools, shall be entitled to be received into the institution, maintained and educated at the expense of the state, if in the judgment of the superintendent the applicant is a suitable person to receive its benefits. Persons of greater age, and those not residents of the state, may be admitted if the capacity of the institution will permit, but for all non-residents or those not resident for the required time a fair rate of compensation shall be paid, to be fixed by the board; no such persons, however, shall be received in the institution to the exclusion or detriment of those for whom it is especially founded.

3365. **Parents,** guardians, or those having legal control, sending children or wards to the institution, will be required **to provide** suitable clothing, and expense of transportation to and from their homes, unless financially unable to do so, in which case the parents, guardians, or next friend of such children, or any officer of the county or precinct where such children reside, may make application to the county court, and upon a decision by such court that such children are paupers, or are unable to procure suitable clothing or furnish transportation as herein provided, and that they are proper subjects for admission into the institution, an order shall be passed to that effect, and the **judge of** the **county** court of the county from which such children are sent shall **certify** the same to the superintendent of the institution, who shall, if the capacity of the institution will permit, provide necessary clothing and transportation, and charge the same to said county, and present the account to the state auditor, who thereupon shall draw upon the county treasurer of said county for the amount so charged to the county; and the said county shall annually assess and collect by tax the amount necessary to pay said order or orders, and if said county shall fail to do so, the district court in said county shall, on application therefor, compel the same by mandamus. The superintendent shall furnish county judges with blank applications for admission.

3366. The **sum** of fifty thousand dollars from the general fund of the state is hereby **appropriated** for the purpose of constructing and furnishing buildings for use for said institution as provided in this act.

3367. In order to create a fund for the support of said institution there is hereby authorized and shall be made an **annual tax** levy on the taxable property of the state, not to exceed one-eighth ($\frac{1}{8}$) of one mill on the dollar; said fund shall be known as "The Fund of the Institution for the Feeble Minded."

Secs. 3368 and 3369. "An act to establish a **home for** the **friendless** in the state of Nebraska and to provide for the erection and location and government of the same." 1881, p. 247. In force June 1.

3368. That a **home** for the friendless be **established** in the state of Nebraska.

3369. The **government** of said home shall be by and under the supervision of the society of home for the friendless; *Provided,* That nothing herein contained shall be so construed as to prevent the board of public lands and buildings from establishing rules and regulations for the government of such home in any manner.

INSANE.

Secs. 3370 to 3424. "An act for the government of the hospital for the insane, defining the legal relations of insane persons and providing for their care aud protection." 1873. In force March 3. G. S., p. 411.

3370. That the **hospital** for the insane **located** at Lincoln, in the county of Lancaster, shall be known under the **name** and by the title of the "Nebraska Hospital for the insane," and shall be under the charge of three trustees, two of whom shall constitute a quorum for the transaction of business.

3371. The trustees shall have the general control and **management** of the hospital; they shall have full power to make all by-laws necessary for the government of the same, not inconsistent with the constitution and laws of this state, and to conduct the affairs of the institution in accordance with the laws and by-laws regulating the same. It shall be the duty of the majority of said board to visit the hospital quarterly, and at said quarterly visits they shall, with the superintendent, examine the accounts of the steward, and certify their approval or otherwise on the page of his monthly balance.

3372. The board of trustees shall appoint, upon the nomination of the superintendent, a steward and a matron, who, together with the superintendent and assistant physician, shall be styled the resident **officers** of the hospital, and shall reside in the same, and be governed and subject to all the laws and by-laws established for the government of the hospital.

Governor appoints officers of state institutions. 18, 340 (25 N. W., 342).

3373. The board of **trustees** may take and **hold** in trust, for the hospital, any lands conveyed or devised, and any money or other personal **property** given or bequeathed, to be applied for any purpose connected with the institution.

3374. The **board** of trustees shall make a **record of** their **proceedings** at all meetings, in a book to be provided for that purpose, and at their annual meeting shall make a **report** to the governor of the condition and wants of the hospital, which shall be accompanied by a full and accurate report of the superintendent, and a detailed account of all moneys received and disbursed by the steward.

3375. **No** trustee or any **officer** of the institution shall hereafter be directly or indirectly **interested in** the **purchase** of building material, or any article of furniture or supply, for the use of the hospital.

3376. The **governor** of the state shall **appoint** a **superintendent** and may appoint two assistant physicians for the hospital of the insane, *one of whom shall be a woman,* who shall hold their offices for a term of six years, unless sooner removed as hereinafter provided.

* to * inserted 1883, p. 234.

3377. The **superintendent** of said institution shall be a physician of acknowledged skill and ability in his profession, and be a graduate of a regular medical college. He shall be the chief executive officer of the hospital, and shall hold his office for the term of six years, unless sooner removed by the governor for malfeasance in office, or other good and sufficient cause. He or the assistant physician must be in daily attendance at the hospital, and in no instance must both be absent at the same time. Before entering upon the **duties** of his office, he shall take and subscribe an oath or affirmation for the faithful and diligent discharge of the duties required by law. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and shall see that the several officers of the institution faithfully and diligently discharge their respective duties. He shall employ attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical administration of the government of the hospital.

Amended 1875, p. 86.

3378. The superintendent shall provide an official seal for the hospital, upon which shall be the words, "Nebraska Hospital for the Insane." He shall make reports to the board of trustees as provided for in section eight (8) of this act.

3379. The **assistant physicians** shall be graduates of a medical school, and be able to perform the ordinary **duties** of the superintendent, and the physician who is oldest in office shall be known as the first assistant, and shall, during the necessary absence of the superintendent, perform the duties of said superintendent. The salary of the first assistant shall be fifteen hundred dollars ($1,500), and of the second assistant twelve hundred dollars ($1,200) per annum.

Amended 1883, p. 234.

3380. The **steward,** under the direction of the superintendent, and not otherwise, shall make all purchases for the hospital where they can be made on the best terms, keep the accounts, make engagement with, pay, and discharge those employed in and about the hospital, and have a personal superintendence of the farm, garden, and grounds, and perform such other duties as may be assigned him.

3381. The **matron,** under the direction of the superintendent, and not otherwise, shall have the general supervision of the domestic arrangements of the hospital, and do what she can to promote the comfort and restoration of the patients.

3382. In each organized county of the state there shall be a board of commissioners, consisting of three (3) persons, to be styled **commissioners of insanity,** two (2) of whom shall constitute a quorum; the clerk of the district court shall be *ex-officio* member of such board, and clerk of the same; the other members shall be appointed by the judge of said court; one of them shall be a respectable practicing physician, and the other a respectable practicing lawyer, and the appointments shall be made of persons residing as convenient as may be to the county seat; such appointments may be made during the session of the court, or in vacation; and, if made in vacation, it shall be by written order, signed by the judge and recorded by the clerk of the court. Immediately on the taking effect of this act, the judge shall make the first appointment; he shall then appoint one for one year, and the other for two years; as their respective terms expire, their successors shall be appointed for two (2) years; the appointment of successors may be made at any time within three (3) months prior to the expiration of the term of the incumbent, who shall hold his office until his successor is appointed and qualified. In the temporary absence, or inability to act, of two (2) of the commissioners, the judges of the district court, if present, may act in the room of one of such commissioners; or the commissioner present may call to his aid a respectable practicing physician or lawyer, who, after qualifying as in other cases, may act in the same capacity. The record in such case must show the fact of such absence.

3383. Before entering upon the duties of their office, the persons so appointed shall take and subscribe an **oath** or affirmation to support the constitution of the United States and of the state of Nebraska, and to faithfully discharge their duties according to law as such commissioners; which obligation shall be filed with the clerk of said court, who shall enter a memorandum thereof on the records; they shall organize by choosing one of their number president; they shall hold their **meetings** for business at the office of the clerk of said court, unless, for good reasons, they shall fix on some other place; if they deem necessary or advisable, they may hold sessions at such regular times as they may fix; they shall also meet on notice from the clerk.

3384. The term "clerk" as herein used means **clerk of** said **board** of commissioners, unless otherwise expressed; and the said clerk shall sign and give or issue all notices, appointments, warrants, subpœna, or other process required to be given or issued by the commissioners, affixing thereto his seal as clerk of said court; he shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports, and other communications; he shall keep separate books in which to minute the proceedings of the board, and his entries therein shall be sufficiently full to show, with the the papers filed, a complete record of their findings, orders, and transactions; the notices, reports, and communications herein required to be given or made may be sent by mail, unless otherwise expressed or implied; and the fact and date of such sending, and of their reception, must be noted on the proper record.

3385. The said **commissioners** shall have cognizance of all applications for admission into the hospital, or for the safe keeping otherwise of insane persons within their respective counties, excepting in cases otherwise specially provided for. For the purpose of discharging the duties required of them, they shall have **power** to issue subpœna, and compel obedience thereto, to administer oaths, and do any act of a court necessary and proper in the premises.

3386. **Applications for admissions to** the **hospital** must be madé in writing in the nature of an information, verified by affidavit; such information must allege that the person in whose behalf the application is made is believed by the informant to be insane and a fit subject for custody and treatment in the hospital; that such person is found in the county and has a legal settlement therein, if such is known to be the fact; and if such settlement is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject.

3387. On the filing of an information as above provided, the **commissioners** shall at once take steps to investigate the grounds of the information; for this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his or her presence; and they may issue their warrant therefor, and provide for the suitable custody of such person until their **investigation** shall be concluded; such warrant may be executed by the sheriff or any constable in the county, or if they shall be of opinion from such preliminary inquiry as they may make, and in making which they shall take the testimony of the informant if they deem necessary or desirable, and of other witnesses if offered, that such course would probably be injurious to such person or attended with no advantage, they may dispense with such presence. In their examinations they shall hear testimony for and against such application, if any is offered; any citizen of the county or any relative of the person alleged to be insane may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners, whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing **physician** of the county to visit or see such person, and make a personal examination touching the truth of the allegation in the information, and touching the actual condition of such person, and forthwith report to them thereon; such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his own hand that he has in pursuance of his **appointment** made a careful personal examination as required; and that on such examination he finds the person in question insane, if such is the fact; and if otherwise, not insane; and in connection with his examination the said physician shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers so far as may be to the interrogatories hereinafter required to be propounded in such cases, which interrogations and answers shall be attached to his certificate.

3388. On the return of the physician's certificate the **commissioners** shall, as soon as practicable, conclude their investigations; and having done so, they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county; and if not in their county, where it is, if ascertained; if they find such person is not insane they shall order his or her discharge, if in custody; if they find such person insane, and a fit subject for custody and treatment in the hospital they shall forthwith issue their warrant and a duplicate thereof, stating such **finding,** with the settlement of the person, if found; and if not found, their information, if any, in regard thereto; authorizing the superintendent of the hospital to receive and keep such person as a **patient** therein; said warrant and duplicate, with the finding and certificate of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him or her, with such duplicate and physician's certificate and finding, to the superintendent thereof; the superintendent, over his official signature, shall acknowledge such **delivery** on the original warrant, which the sheriff shall return to the clerk of the commissioners, with his cost and expense endorsed thereon; if neither the sheriff or his deputy is at hand, or both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath or affirmation faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff; the sheriff or any other person so appointed may take to his aid such assistance as he may need to execute such warrant; but no female person shall thus be taken to the hospital without the attendance of some other female or some relative of such person. The superintendent in his acknowledgment of delivery must state whether there was any such person in attendance, and give the name or names, if any. It is, however, hereby provided that if any relative or immediate friend of the patient who is a suitable person shall so request, he shall have the privilege of taking and executing such warrant in preference to the sheriff or any other person, and without taking such oath or affirmation; and for so doing he shall be entitled to his necessary expenses, but to no fees. The requirements of this and preceding section are modified by the provisions of the next section.

County is only liable for expense of insane who have a legal settlement therein. 18, 612 (26 N. W., 378.)

3389. If the commissioners find that the **person** so **committed** to the hospital has, or probably has, a **legal settlement** in some other county in the state, they shall immediately notify the commissioners of such county of such finding and commitment; and the commissioners so notified shall thereupon inquire and ascertain, if possible, whether the person in question has a legal settlement in their county, and shall immediately notify the superintendent of the hospital and the commissioners of the county from which such person was committed, of the result of such inquiry. If the legal settlement of a person so committed cannot for a time be ascertained, and is afterwards found, the notices so required shall then be given.

3390. When the **superintendent** of the hospital has been duly **notified,** as herein required, that a patient sent to the hospital from one county has a legal settlement in another county of the state, he shall thereafter hold and treat such patient as from the latter county; and such holding shall apply to expenses already incurred in behalf of such patient and remaining unadjusted.

3391. **Expenses** incurred as herein provided, by one county, on account of an insane person whose legal settlement is in another county of the state, shall be **refunded,** with lawful interest thereon, by the county of such settlement; and shall be presented to the county commissioners of the county sought to be charged, which shall be allowed and paid the same as other claims.

3392. **Patients** in the hospital **having no legal settlement** in the state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state; this provision shall apply to all such patients now in the hospital, touching expenses already incurred and remaining unpaid, if any such there be, and the trustees may authorize the superintendent to remove any such patient at the expense of the state, if they see proper.

3393. **All patients** in the hospital shall be regarded as standing on an **equal** footing; and the several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care; *Provided*, That if the relatives or immediate friends of any patient shall desire it, and shall pay the expenses thereof, such patient may have **special care**, and may be provided with a special attendant, as may be agreed upon with the superintendent; in such cases the charges for such special care and attendance shall be paid quarterly in advance.

3394. The **relatives** or friends of any patient in the hospital shall have the privilege of **paying** any portion or all of the **expenses** of such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid.

Children are not bound by statute or common law to maintain insane parent in state hospital for insane. 25, 767 (41 N. W., 774). **Brothers and sisters of insane person not liable for his expenses in hospital. 24,** 598 (39 N. W., 621).

3395. If, in the case of any persons found to be insane, and fit subjects for custody and treatment in the **hospital,** as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein for **want of room,** or for any other cause, and that they cannot with safety be allowed to go at liberty, the commissioners shall require that such patients shall be suitably provided for otherwise, until such admission can be had, or until the occasion therefor no longer exists; such **patients** may be **cared for** either as public or as private patients; those shall be treated as private patients whose relations or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person as special custodian, who shall have authority, and whose duty it shall be, in all suitable ways, to restrain, protect, and care for such patient, in such manner as to best secure his or her safety and comfort, and in such manner as to best protect the persons and property of others. In the case of public patients, the commissioners shall require that they be in like manner restrained, protected, and cared for by the commissioners of the county or overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such commissioners of the county, or overseers of the poor, who shall forthwith comply with the same. If there is no poor-house for the reception of such patients, or if no more suitable place can be found, they may be confined in the jail of the county in charge of the sheriff.

3396. On application to the commissioners on behalf of persons alleged to be insane, and whose **admission** to the hospital is **not sought,** made substantially in the manner above prescribed, and asking that provision be made for their care as insane, either public or private, within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their **care,** protection, and restraint, as in the case of other applications.

3397. On information laid before the commissioners of any county that a certain **insane person** in the county is **suffering** for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded, they shall make all needful provisions for the **care** of such person as provided in other cases.

3398. **No** person supposed to be **insane** shall be **restrained** of his or her liberty by any other person, otherwise than in pursuance of authority obtained as herein required, **exceping** to such extent and for such brief period as may be necessary for the safety of persons and property, until such authority can be obtained.

3399. Any person having care of an **insane person,** and restraining such person either with or without authority, who shall treat such person with wanton severity, harshness, or **cruelty,** or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable in an action for damages.

3400. **Insane** persons who have been under care, either as public or private patients, **outside of** the **hospital,** by authority of the commissioners of any county, may on application to that effect be **transferred** to the hospital, whenever they can be admitted thereto, on tbe warrant of such commissioners; such admission may be had without another inquest, at any time within six months after the inquest already had, unless the commissioners shall deem further inquest advisable.

3401. In each case of **application for admission** to the hospital, correct answers to the following **interrogatories,** so far as they can be obtained, shall accompany the physician's certificate; and if, on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected. *First*—What is the patient's name? Married or single? If any children, how many? Age of youngest child? Age of patient? *Second*—Where was the patient born? *Third*—Where is his (or her) place of residence? *Fourth*—What has been the patient's occupation? *Fifth*—Is this the first attack? If not, when did the others occur, and what was their duration? *Sixth*—When were the first symptoms of this attack manifested, and in what way? *Seventh*—Does the disease appear to be increasing, decreasing, or stationary? *Eighth*—Is the disease variable, and are there rational intervals? If so, do they occur at regular periods? *Ninth*—On what subjects or in what way is derangement now manifested? State fully. *Tenth*—Has the patient shown any disposition to injure others? *Eleventh*—Has suicide ever been attempted? If so, in what way? Is the propensity now active? *Twelfth*—Is there a dispositition to filthy habits, destruction of clothing, breaking glass, etc.? *Thirteenth*—What relatives, including grandparents and cousins, have been insane? *Fourteenth*—Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits, before the accession of the disease? Any predominant passion, religious impressions, etc.? *Fifteenth*—Has the patient been subject to any bodily disease—epilepsy, suppressed eruptions, discharge of sores, or ever had any injury of the head? *Sixteenth*—Was the patient ever addicted to intemperance in any form? *Seventeeth*—Has restraint or confinement been employed? If so, what kind, and how long? *Eighteenth*—What is supposed to be the cause of the disease? *Nineteenth*—What treatment has been pursued for the relief of the patient? Mention particulars and the effect. *Twentieth*—State any other matter supposed to have a bearing on the case.

3402. If at any time it may become necessary, for **want of room** or other cause, to discriminate in the general reception of patients into the hospital, a **selection** shall be made as follows: *First*—Recent cases, *i. e.*, cases of less than one year's duration. *Second*—Chronic cases, *i. e.*, when the disease is of more than one year's duration, presenting the most favorable prospects of recovery, shall be next preferred. *Third*—Those for whom applications have been longer on file, other things being equal, shall be next preferred; and *Fourth*—When cases are equally meritorious, in all other respects, the indigent shall have the preference.

3403. On a statement in writing, verified by affidavit, addressed to a judge of the district court of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his or her legal settlement, **alleging** that such **person** is **not insane,** and is unjustly deprived of his or her liberty, such judge shall appoint a **commission** of not more than three persons, in his discretion to inquire into the merits of the case; one of which shall be a physician, and if two or more appointed, one shall be a lawyer. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him or her, if possible, from suspecting its object, and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital touching the merits of the case; if they shall judge it prudent and advisable, they may disclose to the party the object of their visit, and either in the presence of such party, or otherwise, make further **investigation** of the matter; they shall forthwith **report,** to the judge making the appointment, the result of their examination and inquiries; such report shall be accompanied by a statement of the case and signed by the superintendent; if on such report and statement, and the hearing of the testimony, if any is offered, the judge shall find the person not insane, he shall order his or her discharge; if on the contrary, he shall so state, and authorize his or her continued detention. The **finding** and order **of** the **judge,** with the report and other papers, shall be filed in the office of the clerk of the court over which such judge presides, who shall enter a memorandum thereof on his record, and forthwith notify the superintendent of the hospital of the finding and order of the judge, and the superintendent shall carry out the order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, and paid by the state out of any funds not otherwise appropriated; *Provided,* That the applicant shall pay the same, if the judge shall find that the application was made without probable grounds, and shall so order.

3404. The **commission** so provided for shall **not** be **repeated** oftener than once in six months, in regard to the same party; nor shall such commission be appointed in the case of any patient within six months of the time of his or her admission.

3405. All persons confined as **insane** shall be **entitled to** the benefit of the writ of **habeas corpus,** and the question of insanity shall be decided at the hearing; and if the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.

3406. If any **patient** shall **escape** from the hospital, the superintendent shall cause immediate search to be made for such patient; and if the patient cannot soon be found, he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs, and if such patient is found in their county, the commissioners shall cause him or her to be returned, and shall issue their warrant therefor, as in other cases, unless the patient shall be discharged, or unless, for good reasons, they shall provide for his or her care otherwise, of which they shall notify the superintendent.

3407. Any **patient** who is cured shall be immediately **discharged** by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing, and a sum of money not exceeding twenty (20) dollars, which shall be charged with the other expenses in the hospital of such patient. The relatives of any patient not susceptible of cure by medical treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and move such patient on the consent of the board of trustees; *Provided*, That in the interim of the meetings of the board, the consent of two of the trustees shall be sufficient.

3408. On the **application of** the relations or immediate **friends** of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county, as in other cases, may authorize his or her **discharge** therefrom; *Provided*, No patient who may be under charge or conviction of homicide shall be discharged without the order of the board of trustees.

3409. The board of trustees shall order the **discharge** or removal from the hospital **of** incurable and **harmless patients** whenever it is necessary to make room for recent cases; *Provided*, That in the interim between the meetings of the board, the superintendent, in conjunction with two trustees, shall possess and exercise the power granted in this section.

3410. When **patients** are **discharged** from the hospital by the authorities thereof, **without application** therefor, **notice** of the order of discharge shall at once be sent **to** the **commissioners** of insanity of the county where they belong, and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county as in other cases, unless such patients are discharged as cured.

3411. The superintendent shall certify to the auditor of state on the first days of March, June, September, and December the **amount** (not previously certified by him) **due** to said hospital **from** the several **counties** having patients chargeable thereto, and said auditor shall pass the same to the credit of the hospital. The auditor shall thereupon notify the county clerk of each county so owing, of the amount thereof, and charge the same to said county, and the board of county commissioners shall add such amount to the next state tax to be levied in said county, and pay the amount so levied into the state treasury.

This is a county tax and is not void for want of uniformity. 18, 610 (26 N. W., 378).

3412. The provisions herein made for the support of the insane at public charge, shall not be construed to release the **estates of** such persons, nor their **relatives,** from **liability** for their support, except from the cost of board, care, and treatment while in the hospitals of the state, which cost of board, care, and treatment shall be borne by the state; and the commissioners of the several counties are authorized and empowered to collect from the property of such patients, or from any person or persons legally bound for their support, any sum paid by the county in their behalf, as herein provided; and the certificate from the superintendent, and the notice from the auditor of state, stating the sums charged in such cases, shall be presumptive evidence of the correctness of the sum so stated. If the board of county commissioners, in the case of any insane person who has been supported at the expense of the county, shall deem it a hardship to compel the relatives of such patient to bear the burden of his or her support, they may relieve such relatives from any part or all of such burden as may seem to them reasonable and just.

Amended 1891, p. 268.

3413. Whenever it shall be shown to the satisfaction of the **commissioners** of insanity of any county that cause no longer exists for the care, within the county, of any particular person as an insane patient in their county, as herein provided, they shall **order** the immediate **discharge** of such person.

3414. The commissioners of insanity shall be allowed at the rate of three (3) dollars per diem each, for all the time actually employed in the duties of their office; they shall also be allowed their necessary and actual expenses, not including charges for board. The clerk, in addition to what he is entitled to as a commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed; he shall also be allowed twenty-five (25) cents for each notice or process given or issued under seal as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for his personal service in conveying a patient to the hospital and returning therefrom, at the rate of three dollars per day for the time necessary and actually employed, and mileage the same as is allowed in other cases, and for other service the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The **compensation** and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner. Whenever the commissioners of insanity issue their warrant for the admission of a person to the hospital, and funds to pay the expenses thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including the necessary assistance, and not including the compensation allowed the sheriff; and on such estimate, certified by the clerk of commissioners of insanity, the county clerk shall issue his order on the treasurer of the county in favor of the sheriff or other person entrusted with the execution of such warrant; the sheriff or other person executing such warrant shall accompany his return with a statement of the expenses incurred; and the excess or deficiency may be deducted from or added to his compensation, as the case may be; if funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed, on the return of the warrant. When the commissioners of insanity order the return of a patient, compensation and expenses shall be in like manner allowed.

3415. Any **officer** required as herein to perform any act, as herein provided, and any person accepting an appointment under the provisions of this act, and willfully refusing or **neglecting** to perform his **duty** as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages.

3416. The **warrant of** the commissioners of insanity authorizing the **admission** of any person to the hospital as a patient, accompanied by a physician's certificate as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind, on account of the reception and detention of such person in the hospital; *Provided*, Such detention shall be otherwise in accordance with the laws and by-laws regulating its management.

3417. The superintendent shall affix the **seal of** the **hospital** to any notice, order of discharge, report, or other paper required to be given by him, or issued.

3418. The term "**insane,**" as used in this act, **includes** every species of insanity or mental derangement. The term "**idiot**" is restricted to persons supposed to be naturally without mind; no idiot shall hereafter be admitted into the hospital for the insane; and all such idiots now in said hospital shall be discharged at the expiration of thirty days from the passage of this act, and it is hereby made the duty of the board of trustees to notify the commissioners of insanity of the county from which such idiots were sent, to remove said idiots from the hospital; and in case of neglect or refusal to comply with these provisions within thirty (30) days from the date of said notification, the superintendent shall cause said idiots to be returned to said counties at the expense of said county, which sum shall be collected in the same manner as provided for patients in section forty-seven of this act. When such idiots are removed, they shall be provided for in the same manner as other poor.

3419. The **trustees** of the hospital shall **provide** for furnishing the commissioners of insanity of the counties entitled to send patients to the hospital, with such **blanks** for warrants, certificates, etc., as will enable them with regularity and facility to comply with the provisions of the law, and also with copies of the by-laws of the hospital when printed.

3420. The board of trustees may, if they deem desirable, and upon nomination of the superintendent, appoint a **chaplain** and prescribe his duties.

3421. **Insane** persons may be admitted **from other states** and territories upon equal footing and on the same conditions as private pay patients. The sum to be paid monthly for the care, maintenance, and treatment of such patients to be fixed from time to time by the board of trustees, and to be collected quarterly in advance by the steward of the hospital and accounted for as other funds in his hands belonging to the state of Nebraska.

3422. The **salary** of the superintendent shall be twenty-five hundred dollars per annum, and that of the assistant physician one thousand dollars per annum, to be paid in the same manner as other state officers.

NORFOLK HOSPITAL.

Sec. 3423. "An act to locate a hospital for insane at Norfolk," etc. 1885, p. 262.

3423. That said **institution** shall be **under** the **charge** of the **board** of public lands and buildings, and the governor shall appoint for said hospital such officers as are required in the hospital for the insane. And it is further provided that the board of public lands and buildings shall adopt such regulations as they may deem expedient in regard to what patients or class of patients shall be admitted to and provided for in the respective hospitals, or from what portion of the state patients, or certain classes of patients, may be sent to each or either hospital, and the said board may change such regulations from time to time as they may deem best, and they shall make such publication of these regulations as they may deem necessary for the information of those interested.

HASTINGS ASYLUM FOR INCURABLE INSANE.

Sec. 3424. "An act to establish an asylum at Hastings," etc. 1887, p. 475.

3424. That said **institution** shall be **under** the **charge** of the **board** of public lands and buildings, and the governor shall appoint for said asylum such officers as may be required in said asylum. It is further provided that the board of public lands and buildings shall adopt such regulations as they may deem expedient for the proper management of an asylum for incurable insane, and the said board may change such regulations from time time to time as they may deem best, and they shall make such publications of these regulations as they may deem necessary for the information of those interested.

Secs. 3425 to 3427. "An act for the **protection of** the **inmates** of the hospital for the insane." 1883, p. 235. In force February 27.

3425. That henceforth there shall be **no censorship** exercised over the correspondence of inmates of the hospital for the insane in this state, but their **post-office rights** shall be as free and unrestrained as are those of any resident or citizen of this state, and be under the protection of the same postal laws. And every inmate shall be allowed to write when and whenever he or she desires to any person he or she may choose. And it is hereby made the duty of the superintendent to furnish each and every inmate of each and every insane asylum in this state with suitable material, at the expense of the state, for writing, enclosing, sealing, stamping, and mailing letters, sufficient for writing at least one letter a week, provided they request the same, unless they are otherwise furnished with such material; and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a postoffice box, provided by the state at the hospital for the insane, and kept in some place easy of access to all the patients; and the contents of such postoffice box or boxes shall be collected once every week by an authorized person, and by him placed into the hands of the United States mail for delivery. And it is hereby made the duty of the superintendent of every hospital for the insane in the state, either public or private, to deliver or cause to be delivered to said person any letter or writing to him or her directed, without opening or reading the same, or allowing it to be opened or read without consent of the recipient of such letter, or the request or consent of the writer.

3426. That any person **refusing** or neglecting **to comply** with, or willfully and knowingly violating any of the provisions of this act, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not exceeding three years nor less than six months, or by a **fine** not exceeding $500, or both, at the discretion of the court, and by ineligibility to any office in the asylum afterward.

3427. A **printed copy** of this act shall be framed and kept **posted** in every ward of every hospital for the insane, both public and private, in the state of Nebraska.

Secs. 3428 to 3434. "An act to establish and maintain in Nebraska a soldiers' and sailors' home." 1887, p. 622. In force March 4. (Secs. 7 and 8 repealed 1891, p. 340.

3428. **Establishment.**—That there shall be established and maintained by the state of Nebraska an institution to be known as the Nebraska soldiers' and sailors' home, the object of which shall be to provide homes and subsistence to honorably discharged soldiers, sailors, and marines, and also hospital nurses who served in the United States army or navy or hospitals during the war of the rebellion, who shall at the time of application for admission to such home have been an actual *bona fide* resident of this state for two years next preceding such application, and who have become disabled by reason of such service, old age, or otherwise, from earning a livelihood, and would be dependent on public or private charities, and also the wives of such soldiers, sailors, or marines, who have attained to the age of fifty years, and the widows of soldiers, sailors, or marines who died while in the service of the United States, and the widows of such soldiers, sailors, or marines who were honorably discharged from such service and have since died; *Provided*, Such widow shall have been a *bona fide* resident of this state for two years immediately preceding admission to such home, and have attained the age of fifty years, and is unable to earn a livelihood and is dependent on public or private charities; *Provided further*, That all applications for admission to said home shall be made to the county board of the county in which the applicant resides, and it shall be and is hereby made the duty of any county board in this state to whom such application shall be made to inquire into the condition of such applicant, and if upon inquiry it be found that the applicant is unable by reason of disability or old age to earn a livelihood for him or herself and is dependent on public or private charities for maintenance, then the county board shall at once forward the application, together with their finding in regard to the condition of such applicant, under their seal to the legally authorized board of such home, whose duty it is now or hereafter it may be to receive and act upon such applications for admission thereto.

Amended and last proviso added 1881, p. 341.

3429. [**Buildings.**]—The board of public lands and buildings shall, as soon as practicable after this act shall take effect, take the necessary steps for the erection and furnishing of a suitable central building for such institution, capable of accommodating not less than 25 nor more than 50 persons, in addition to the necessary officers and employees. They shall advertise for plans and specifications for such building, and upon the adoption of the same, shall at once advertise for sealed proposals for the erection and completion of said building in accordance with such plans and specifications; and shall let the contract to the lowest bidder therefor, who shall be required to enter into a written contract for the erection and completion of said building in accordance with the bid and the plans and specifications adopted by the board. He shall also give a bond for the faithful performance of his contract, in such sum as the board shall deem ample.

3430. **[Location.]**—Such soldiers' and sailors' home shall be located not less than three miles nor more than six miles from the corporate limits of the city of Grand Island; *Provided,* there shall be donated and conveyed to the state of Nebraska in fee simple, not less than 640 acres of land suitable as a site for said institution; to be approved and accepted by the board of public lands and buildings. If such lands shall not be donated and conveyed within 30 days after this act shall take effect, then the board of public lands and buildings shall locate and establish the same at some other suitable point, where such donation shall be made, having regard to the welfare of the institution and the health of its inmates.

3431. The governor shall appoint five persons, three of whom shall be honorably discharged volunteer soldiers of the United States army, and two of whom shall be either wives, sisters, or daughters of honorably discharged soldiers, sailors, or marines, and members of the Women's Relief Corps of this state, as a **visiting and examining board,** who shall serve for three years from the date of their appointment, one of whom shall serve until April 1, 1892, two until April.1, 1893, and two until April 1, 1894, as may be determined by lot, and their successors, respectively, shall serve three years each, and in every case a member shall hold his or her office until their successor shall be appointed and qualified. They shall each give bond in the sum of two thousand dollars ($2,000) for the faithful discharge of their duty, and shall take and subscribe an oath to support the constitution of the United States and of the state of Nebraska, to faithfully discharge the duties of his or her office without fear or favor. The members of such board shall receive as compensation for their services, the sum of four dollars ($4) per day for each and every day of actual service, and all necessary expenses incurred in the discharge of their duties. The governor shall have power to remove any member of the board for inefficiency or other good and sufficient cause, and any vacancy occurring from death, removal, or otherwise, shall be filled in the same manner as above.

Re-written 1889, p. 342.

3432. The management of the home shall be vested in the visiting and examining board, who shall visit said home at least once each month, and inquire into the conduct and management of the affairs of the same, and the treatment of the members thereof, define the duties of the officers, fix their compensation, and to make all necessary by-laws, rules, and regulations for the government of the institution and its inmates. They shall prescribe rules of admission to said home, in accordance with the provision and object of this act. They shall from time to time, as they may deem necessary or advisable, cause such lands as may not be necessary in connection with the central building to be surveyed and platted into suitable tracts of two and one-half (2½) acres or more, with regularly laid out streets and alleys, and shall cause neat and comfortable cottages and outbuildings to be erected thereon as may be found necessary, and shall assign tracts of land and cottages to such of the inmates as may be able to partially support themselves by manual labor. Such land shall be cultivated under such rules as may be adopted for the government of such home. They shall appoint one of their number to be president and one as secretary. They shall hold their stated meetings at the institution, at least as often as once each month such time as they may appoint, and called meetings at the call of the president, or at request of three members of the board. A majority of the board shall constitute a quorum for the transaction of business. At each regular meeting they shall inspect the institution under their charge, and they, or any one of them, may visit and inspect at any time. They shall from time to time order such expenditures, either for permanent improvement or otherwise as in their judgmeni they deem necessary; *Provided, however,* That no liability shall be incurred that will exceed the appropriation made for any specific purpose. They shall make contracts for furnishing supplies for the institution and the inmates thereof with the lowest and best bidder once each quarter at such time as the board may deem best, after giving at least two weeks' notice in such manner as the board may direct. The board is authorized to furnish such support and care to inmates of said institution as may be deemed necessary to render such persons comfortable, taking into consideration their ability to partially support themselves. All contracts for the erection of any buildings or other improvements shall be let to the lowest responsible bidder, and the board shall have power to reject any and all bids either for the erection of buildings or the furnishing of supplies for said soldiers' and sailors' home. They shall audit all bills and vouchers for expenditures for the institution before the same shall be paid.

Rewritten 1891, p. 343.

3433. The commandant, before entering upon the duties of his office, shall give a bond payable to the state of Nebraska in such amount and such sureties, not less than two, as shall be approved by the visiting and examining board and by the governor, conditioned upon the faithful performance of the duties of his office, which shall be filed in the office of the secretary of state. He shall be the financial agent of the visiting and examining board, and shall have charge of the premises, property, and inmates subject to their direction. He shall, with the consent of the visiting and examing board, appoint all subordinate officers and employees, and assign them their respective duties, and with the consent of said board discharge them from service. He shall see that all officers and employees of the institution faithfully discharge their duties, and shall be directly responsible to the board for the economy, efficiency, and success of the internal management of said institution. *(Sec. 9.) On or before the first day of December preceding each regular session of the legislature, the visiting and examining board shall make out and transmit to the governor a full and detailed report of all their transactions and doings for the two years ending on the thirtieth day of November immediately preceding, showing, for the two years, and for each of them separately, the number of inmates admitted and discharged since their last report, the number then remaining in the institution, the average annual attendance, the receipts, disbursements and expenditures of moneys or other funds, the valuation of property on hand, the amount of each appropriation or fund under their control, and the balance thereof remaining unexexpended in the treasury of the state; *Provided further,* That the governor may call for and require special reports when in his judgment the public interest shall demand the same.

Rewritten 1891, p. 345.

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*In the enrolled bill the words "Section 9" are inserted in the body of the section, but all that follows is printed as if it were a part of sec. 6. Sec. 9 is not elsewhere mentioned, either in the title or in the body of the act.

3434. *Provided,* Nothing in this act shall be construed to deny any old soldier or sailor, who is properly a subject to be admitted to the home, the privilege of paying his board or any part thereof if he so desires.

Amended 1891, p. 346.

II. PENAL INSTITUTIONS.

Secs. 3435 to 3448 formed ch. 29, R. S. 1866, p. 242, entitled "Jails."

3435. The **judges** of the district courts of the several judicial districts of this state shall, from time to time, as they may deem necessary, **prescribe,** in writing, **rules for** the regulation and government of the **jails** in the several counties within their respective districts, upon the following subjects: *First*—The cleanliness of the prison and prisoners. *Second*—The classification of prisoners in regard to sex, age, and crime, and also persons insane, idiots, and lunatics. *Third*—Beds and clothing. *Fourth*—Warming, lighting, and ventilation of the prison. *Fifth*—The employment of medical and surgical aid when necessary. *Sixth*—Employment, temperance, and instruction of the prisoners. *Seventh*—The supplying of each prisoner with a Bible. *Eighth*—The intercourse between prisoners and their counsel and other persons. *Ninth*—The punishment of prisoners for violation of the rules of the prison. *Tenth*—Such other regulations as said judges may deem necessary to promote the welfare of said prisoners. *Provided,* That said rules shall not be contrary to the laws of this state.

3436. [**Publication of rules.**]—The said judges shall, as soon as may be, cause a copy of said **rules** to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners forthwith to cause the same to be **printed,** and to furnish the sheriff of their county with a copy of said rules for each and every room or cell of said jail, and also to forward a copy of said rules by mail to the state auditor, who shall carefully file away and preserve the same.

3437. The said sheriff shall, immediately on the receipt of said **rules,** cause a copy thereof to be **posted** up and continued in some conspicuous place in each and every room or cell in said jail.

3438. The said judges may, from time to time, as they may deem necessary, revise, alter, or amend said **rules,** and such **revised,** altered, or amended rules shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by the second and third sections of this chapter.

3439. The **sheriff,** or, in case of his death, removal, or disability, the person by law appointed to supply his place, shall **have charge** of the county jail of his proper county, and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the rules and directions of said district judge above specified, or which may from time to time by said judge be made and communicated to him by said commissioners.

3440. The sheriff or other officer performing the duties of sheriff, of each county of this state, shall procure, at the expense of the proper county, a suitable book, to be called the **jail register,** in which the said sheriff, by himself or his jailer, shall enter: *First*—The name of each prisoner, with the date and cause of his or her commitment. *Second*—The date or manner of his or her discharge. *Third*—What sickness, if any, has prevailed in the jail during the year, and if known, what were the causes of such disease. *Fourth*—Whether any or what labor has been performed by the prisoners, and the value thereof. *Fifth*—The practice observed during the year, of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing. *Sixth*—The habits of the prisoners as to personal cleanliness, diet, and order. *Seventh*—The operations of the rules and directions prescribed by the district judge. *Eighth*—The means furnished prisoners of literary, moral, and religious instruction, and of labor. *Ninth*—All matters required by said rules, or in the discretion of such sheriff deemed proper. The said sheriff or other officer performing the duties of sheriff shall carefully keep and preserve the said jail register in the office of the jailer of his proper county, and at the expiration of said office shall deliver the same to his successor in office.

3441. The **sheriff** or other officer performing the duties of sheriff, shall, on or before the first day of November in each year, make out in writing from said jail register a **jail report,** one copy of which said report he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county clerk of his county, for the use of the commissioners thereof, and one copy of said report he shall transmit to the secretary of state, and it shall be the duty of the secretary of state to communicate the reports of the several sheriffs of the state to the legislative assembly on or before the first day of its session.

3442. It shall be the duty of the district court to give this chapter in **charge to** the **grand jury** once each term of said court, and lay before them any and all rules, plans, and regulations established by the district judge, relating to county jails and prison discipline, which shall then be in force.

3443. The **grand jury** of each county in this state shall, once at each term of the district court, while in attendance, visit the jail; examine its state and condition; examine and enquire into the discipline and treatment of prisoners, their habits, diet, and accommodations; and it shall be their duty to report to said court, in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this chapter have been violated, pointing out particularly in what said violation, if any, consists. It shall be **also** the duty of the county **commissioners** of each county of this state to **visit** the **jail** of their county once during each of their sessions, in January, April, July, and October of each year.

3444. It shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cell or apartments, frames and sacks for beds, night buckets, and such other permanent **fixtures** and repairs as may be prescribed by the said district judge; said commissioners shall also have power to appoint a **physician** to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury.

3445. That the **sheriffs** or jailers of the several counties, who have the custody of the state prisoners confined in the jails of such counties, shall receive for **boarding** such **prisoners** the sum of seventy-five cents per day; and such sheriffs and jailers are hereby authorized to provide such fuel, lights, washing, and clothing as may be necessary for the comfort of such prisoners while in their custody; and such sheriffs or jailers shall, on the first day of January, April, July, and October of each year, make a report in writing to the state auditor of the number of state prisoners in his custody for the last three months before making his report, when committed, and for what time, and the amount due him for boarding such prisoner; the amount of clothing furnished each prisoner and the cost of the same; also the amount expended by him for washing, lights, and fuel, for that quarter; which account shall be sworn to by said sheriff or jailer before the clerk of the county of which he is sheriff or jailer, and certified to under his seal. Thereupon the state auditor shall draw his warrant upon the state treasurer for the amount due such officer, payable to him; and when the condition of the jails in the state require a constant guard to be kept, to prevent the escape of prisoners confined therein, the sheriff shall be allowed the sum of three dollars per day for **guarding** or procuring guard for such prisoners, which shall be paid him quarterly, with the amount paid him for board, washing, fuel, lights, and clothing.

3446. The **sheriff** shall **visit** the **jail** in person and examine into the condition of each prisoner at least once in each month, and once during each term of the district court; and it is hereby made his duty to cause all the cells and rooms used for the confinement of prisoners to be thoroughly whitewashed, at least three times in each year.

3447. The **jailer** or keeper of the jail shall, unless the sheriff elect to act as jailer in person, be a deputy appointed by the sheriff, and such jailer shall take the necessary oath before entering upon the duties of his office; *Provided*, The sheriff shall in all cases be liable for the negligence or misconduct of the jailer, as of other deputies.

3448. If the **sheriff** or jailer having charge of any county jail shall **neglect** or refuse to conform to all or either of the rules and regulations established by said judge, or to perform any other duty required of him by this chapter, he shall, on conviction thereof, by indictment, for each case of such failure or neglect of duty aforesaid, pay into the county treasury of the proper county, for the use of such county, a **fine** not less than five dollars, nor more than one hundred dollars, to be assessed by the district court of the proper district.

Secs. 3449 to 3482. "An act to provide for the erection of a penitentiary, and for the care and custody of state prisoners." 1870, p. 25. In force March 4.*

3449. The **officers** of the penitentiary shall consist of one warden, who shall be the principal keeper of the penitentiary and clerk of the board of inspectors; one deputy warden, who shall be chief turnkey, and both of whom shall reside at the prison; one physician, and one chaplain, and such number of assistant keepers and guards as the warden and inspectors shall deem requisite.

3450. A printed copy of the **rules** and regulations of the penitentiary shall be furnished to every officer and guard of said penitentiary, at the time he is appointed and sworn.

3451. The warden or deputy warden shall keep a **daily journal** of the proceedings of the penitentiary, in which he shall note all infractions of the rules and regulations of the penitentiary, by any officer or guard thereof, and make a memorandum of every complaint made by any convict of cruel or unjust treatment by any officer of the penitentiary, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any prisoner, naming him and specifying the offense, and also what punishment, if any, was awarded; which journal shall be laid before the inspectors at every stated meeting, and at every special meeting, when demanded.

3452. There shall be paid to the officers of the prison the following yearly **salaries** and compensation, to be paid quarterly out of the state treasury, on the warrant of the auditor, to-wit: To the warden, the sum of fifteen hundred dollars; to the deputy warden, the sum of nine hundred dollars; to the inspectors the sum of five dollars per day for each day actually and necessarily employed in the discharge of their duty; to the chaplain, and physician, and assistant keepers, and guards, such sums as the board of inspectors deem proper and just.

3453. The **warden** shall attend constantly at the penitentiary, except when performing some other duty connected with his office; he shall exercise general

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* Original act provided for a board of inspectors; but this has been superseded by the board of public lands and buildings. 7, 46. All sections relating exclusively to these inspectors are therefore omitted, as are also temporary provisions for the the erection of buildings, etc. This results in the omission of secs. 1-14, 16-23, 26-28, 30, 33-38, 68, 70, and 71.

supervision over and give necessary directions to the keepers and guards, examine whether they have been vigilant in the discharge of their respective duties, examine daily into the health of the prisoners, and take charge of the real and personal estate belonging to or connected with the penitentiary.

3454. All the transactions and dealings of the prison shall be conducted in the name of the **warden,** who shall be **capable** in law **of suing** and being sued in all courts and places, in all matters concerning the said prison, by his name of office, and by that name he is hereby authorized to sue for and recover all sums of money or any property due from any person to any former warden of said prison, or to the people of this state, on account of said penitentiary.

3455. **No officer** of the penitentiary shall **employ** the **convicts** on a work in which he or any other officer has a personal interest, nor be connected, nor have any inteeest in the business or shops belonging to the penitentiary.

3456. The **warden** shall **keep** a regular and correct **account** of all moneys received by him from every source by virtue of his office, including all moneys taken from convicts, or received from proceeds of property taken from them, and of all moneys paid by him, and the person to whom, and the purpose for which the same were paid; and shall make out and deliver to the inspectors quarterly a statement, duly verified, of all moneys received and paid by him on account of the penitentiary, specifying from whom and to whom made, and on what account, and the balance remaining in his hands at the time of rendering of said account.

3457. The **warden** shall **annually,** on the last day of November of each year, close his accounts, and on or before the fifth day of December next thereafter **render** to the auditor of state a full and true **account** of all moneys received by him, and of all moneys expended by him on account of the penitentiary, with sufficient vouchers therefor, which account shall be duly verified by the warden.

3458. He shall **report** to the secretary of state on the first Monday of December in each year the names of all the **convicts pardoned** the preceding year, the county in which they were tried, and the term for which they were sentenced.

3459. When any **convict** offers violence to any officer or guard of the penitentiary, or to any other person or convict, or attempts to do any injury to the buildings or any workshop, or to any appurtenances thereof, or **disobeys** and resists any reasonable **command** of any officer or guard, such officers and guards shall use all reasonable means to defend themselves, and to enforce the observance of discipline.

3460. If any **convict** resists the authority of any officer, keeper, or guard of the penitentiary, or **refuses to obey** any lawful command, such officer, keeper, or guard shall immediately enforce obedience by the use of such weapons or other aid as may be necessary for the purpose, and if in so doing any convict thus resisting shall be necessarily wounded or killed by such officer or his assistants, such officers or assistants are justified and shall be held guiltless.

3461. In case any pestilence or **contagious disease** breaks out among the convicts in the penitentiary, the inspectors and warden may cause such convicts to be removed to some secure and suitable place where such sickness shall receive all necessary care and medical attendance.

3462. The warden shall receive, safely keep, and subject to the discipline of the penitentiary any criminal convicted of any crime against the **United States,** and sentenced to confinement therein by any court of the United States sitting within this state, until such sentence is executed, or until such convict is discharged by due course of law, the United States supporting such **convict** and paying the expenses of executing such sentence.

3463. He shall take **charge of** any **property** that **convicts** may **have** at the time of entering the penitentiary, and if the same is of the value of five dollars or more, may sell the same with the consent of the convict, and place the proceeds at interest for the benefit of such convict or his representatives when he may leave the penitentiary, keeping a correct account of such property and the proceeds thereof.

3464. When any **convict** is **discharged** from prison, the warden shall furnish such convict with a decent suit of **clothes** (if he is not already provided for), at the expense of the state, and shall pay such convict, from any funds belonging to the penitentiary, a sum not exceeding ten dollars; and shall deliver to said convict any property received from him which has not been disposed of according to law. The warden shall furnish, at the expense of the state, a Bible to each convict who can read.

3465. When there are **cells** sufficient, each prisoner shall be confined in a separate cell.

3466. The **clothing** and **bedding** for the convicts shall be of coarse material, and they shall be supplied with a sufficient quantity of substantial and wholesome **food.**

3467. No person shall, without the consent of the warden, bring into or carry out any **writing,** or any information, to or from any convict.

3468. The following **persons** shall be **allowed to visit** the penitentiary at pleasure: The governor, members of the legislature, all state officers, and regularly authorized ministers of the gospel, but no other person shall go within the walls of the penitentiary without the special permission of the warden.

3469. When any convict is delivered to the warden, the officer having such prisoner in charge shall deliver to the warden a certified **copy of** the **sentence** received by such officer from the clerk of the court where such convict was tried, and shall take from the warden a certificate of the delivery of such convict, and such certified copy of the sentence shall be evidence of the facts therein contained.

3470. When any convict **escapes** from the penitentiary, the warden shall use all proper means for the apprehension of such convict, and for this purpose he shall offer a **reward** not to exceed one hundred dollars, and not less than twenty-five dollars; *Provided,* That if such escape was by reason of the negligence of the warden, or any officer under him, the reward shall be paid by the warden.

3471. All suitable **rewards** and other sums of money paid for advertising any convict shall be approved by the board of inspectors, and **paid** out of the state treasury.

3472. The **expenses** and legal **fees** of sheriffs and other officers, incurred in conveying convicts to the penitentiary, shall be approved by the auditor of state, and paid out of the state treasury; said auditor may allow for said expenses and fees the following rates: for sheriff, three dollars per day; for each assistant or guard absolutely necessary, two dollars per day, and ten cents per mile for traveling expenses in going and coming.

3473. No spirituous or fermented **liquors** shall be, under any pretense whatever, brought into or upon the premises of the prison, except by the direction of the prison physician.

3474. The auditor of state is authorized and required to draw his **warrant** on the state treasury for such sums as the inspectors may from time to time direct, for defraying the proper and necessary **expenses** of the prison.

3475. The **warden,** deputy warden, inspectors, physician, assistant keepers, and guards shall be **exempt** from **military** and jury **duties** while actually employed by the state as such officers.

3476. Whenever there is a **vacancy** in the office of warden, or the warden is temporarily absent, all the duties of the warden shall devolve upon and be performed by the deputy warden until the vacancy is filled or the warden returns.

3477. The **physician** shall keep a **register** of all convicts placed under his care; the disease with which they are afflicted; also of the death of any convicts, stating their names, age, time, and cause thereof.

3478. **All books**, accounts, documents, registers, and reports shall be deemed **public** property, of which the warden shall preserve at least one copy of each.

3479. The warden shall cause to be kept **a record** of each and all infractions of the rules and **discipline** by convicts, with the name of the convict offending, and the date and character of each offense, which record shall be placed before the inspectors at each regular meeting of the board.

3480. The **warden** is entitled to the **use of** the house built for him, and the necessary fuel and light for the same, to be supplied from the common stock of the prison, free of charge.

3481. Every lease made of any or all the prison shops and fixtures shall contain a provision for the **constant employment** of all convicts in the penitentiary during the continuance of such lease.

3482. In all cases of **vacancy** in any office of the penitentiary, the governor shall fill the vacancy by appointment.

Sec. 3483. "An act to amend an act entitled 'An act to authorize the lessee of the state penitentiary and grounds to receive and retain the custody of prisoners sentenced to confinement by the courts of the United States and territories of the United States.'" Approved February 26, 1879. 1883, p. 320. In force June 1.

3483. That the lessee of the state penitentiary and convict labor of this state be and hereby is authorized to retain in custody in the penitentiary and grounds, under the discipline and government of the officers of said penitentiary, until October 1, 1889, **persons** heretofore **convicted** of crimes and sentenced to confinement **by** the **courts of** the **United States and** of any of the **territories** of the United States, and heretofore received into said penitentiary; *Provided*, That the retention and custody of such convicts shall not interfere in any manner with the comfort or safe keeping of any person sentenced to confinement in said penitentiary by the courts of this state; *Provided further*, That no such prisoners other than those already therein incarcerated shall be received into said penitentiary after the passage of this act, nor shall the state of Nebraska be liable in any manner on account of the retaining of any such prisoners.

Sec. 3484. "An act to extend the contract for the leasing of the penitentiary, penitentiary grounds, and convict labor to C. W. Mosher, assignee of W. H. B. Stout." 1887, p. 632. In force July 1.

3484. That the **contract** leasing to W. H. B. Stout the penitentiary, penitentiary grounds, and convict labor of the state of Nebraska, executed on the 22d day of September, 1877, and which has been by said Stout assigned and transferred to C. W. Mosher, be and the same is hereby **extended** for the period of ten years from the first day of October, 1889, to said C. W. Mosher, subject to all the conditions and provisions contained in said original contract; *Provided*, That said Mosher shall receive forty (40) cents per day in cash for each convict in full for his compensation under said contract; *Provided further*, That upon the taking effect of this act, the said Mosher shall enter into a bond with the state of Nebraska in the penal sum of one hundred thousand dollars, with good and sufficient sureties, conditioned for the faithful performance of said contract, and upon the execution and delivery of said bond and the approval of said sureties the board of public lands and buildings shall endorse upon said original contract a statement that the same has been extended to said Mosher for the period of ten years from the first day of

October, 1889, according to the provisions of this act; *Provided*, That under this extension of said contract the convicts shall not, nor shall any of them, be employed in the manufacture of cigars, brick, or the cutting of stone, except such brick or stone as may be required in making repairs or improvements at the penitentiary, and in the erection of buildings and walls for the confinement of convicts, and for the use of officers and guards, nor shall any of said convicts be employed upon any public buildings, except buildings for penitentiary purposes; *Provided, however*, That the provisions of this act shall in nowise impair or invalidate any contract now existing.

III. REFORMATORY INSTITUTIONS.

Secs. 3485 to 3498. "An act to amend section one of an act approved February 27, entitled 'An act to locate the Nebraska state reform school for juvenile offenders,'" etc. 1887, p. 590. In force March 31.

3485. That "the state **industrial school** for juvenile offenders," located near Kearney, in the county of Buffalo, is hereby recognized and continued as a school for the retention, education, discipline, industrial training, and reformation of juvenile offenders.

3486. The board of public lands and buildings shall have power to appoint a **superintendent,** an assistant superintendent, a **matron,** and such other officers as in their judgment the wants of the institution may require, and to remove them for sufficient cause, such as incompetency, malfeasance in office, immorality, or neglect of duty. They shall also have power to prescribe the duties of said officers and to determine the salaries to be paid them.

3487. The **boys** and **girls** committed to the school shall be **instructed** in the principles of morality and in such useful branches of knowledge as are taught in the public schools of the state. They shall also be instructed in the principles of the mechanical arts and such practical trades as are best suited to their age, strength, and capacity, and best adapted to secure them a livelihood after leaving the school.

3488. The **superintendent** shall have the **control** and the management of the **school,** subject, however, to the rules and regulations established by the board. At the close of each month he shall present to said board a written **report** showing the general condition of the school, the number of inmates in attendance, the number of commitments and tickets of leave granted, and such other information, together with such suggestions and recommendations as may subserve the best interests of the school. He shall have charge of all the property belonging to the institution, and shall keep an account of all monthly expenditures, which expenditures shall be certified to the board with the monthly report. He shall have power to appoint employees to fill such positions as the board may determine, and shall keep a register showing the social condition of each inmate at the time of committal.

3489. When a **girl** or **boy** of sane mind under the age of eighteen years shall, in any court of record in this state, be found **guilty** of any **crime** except murder or manslaughter, committed under the age of sixteen years, or who, for want of proper parental care, is growing up in mendicancy and vagrancy, or is incorrigible, and complaint thereof is made and properly sustained, the court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered that said boy or girl be sent to the state industrial school, in pursuance of the provisions of this act, and a copy of said order, under the seal of said court, shall be sufficient warrant for carrying said boy or girl to the school, and for his or her committment to the custody of the superintendent thereof.

3490. When a **boy** or **girl** of sane mind, under the age of sixteen years, shall be **convicted** before a justice of the peace or other inferior court, of any crime, mendicancy, vagrancy, or incorrigibility, it shall be the duty of said magistrate, before whom he or she may be convicted, to forthwith send such boy or girl, together with all the papers filed in his office on the subject, under the control of some officer to a judge of a court of record, who shall then issue an **order to** the parent or **guardian** of said boy or girl, or such person as may have him or her in charge, or with whom he or she has last resided, or any one known to be nearly related to him or her, or if he or she be alone and friendless, then to such person as said judge may appoint to act as guardian for the purposes of the case, requiring him or her to appear at a time and place stated in said order, to show cause why said boy or girl should not be committed to the state industrial school for training and reformation.

Certificate of committing court as to age of child committed is conclusive and question can-t be reviewed by *habeas corpus*. **25**, 202 (41 N. W., 152).

3491. Said **order** shall be **served** by the sheriff or other qualified officer, by delivering a copy thereof, personally, to the party to whom it is addressed, or leaving it with some person of full age at the place of residence or business of said party, and immediate return shall be made to said judge of the time and manner of such service. The fees of the sheriff or other officer under this chapter shall be the same as now allowed by law for like services.

3492. At the time and place mentioned in said order, or at the time and place to which it may be adjourned, if the parent or guardian to whom said order may be addressed shall appear, then in his or her presence, or if he or she fail to appear, then in the presence of some competent person whom the said judge shall appoint as guardian for the purposes of the case, it shall be lawful for the said judge to proceed to take the voluntary **examination** of said boy or girl and to hear the statements of the party appearing for him or her, and such testimony in relation to the case as may be produced, and if upon such examination and hearing the said judge shall be satisfied that the boy or girl is a fit subject for the state industrial school, he may commit him or her to said school by warrant.

3493. The judge shall certify in the **warrant** the place in which the boy or girl resided at the time of his or her arrest, also his or her age as near as can be ascertained, and command the said officer to take the said boy or girl and deliver him or her without delay to the superintendent of said school or other person in charge thereof, at the place where the same is located and established, and such certificate, for the purpose of this act, shall be conclusive evidence of his or her residence or age. Accompanying this warrant, the judge shall transmit to the superintendent, by the officer executing it, a statement of the **nature of** the **complaint**, together with such other particulars concerning the boy or girl as the judge is able to ascertain; *Provided*, The **expense** of conveying any boy or girl so committed to said state industrial school, or of returning them to their parent or guardian after their release therefrom, shall be at the expense of the state.

3494. The **proceedings** before any judge or the county court may be **reviewed** on writ of error by the district court, and proceedings before any district court or judge thereof may be reviewed by the supreme court in the manner provided by law for reviewing criminal cases in these courts.

3495. Each **boy** or **girl** committed to the school shall **remain** there until he or she arrives at the age of twenty-one, unless sooner paroled or legally discharged. The superintendent, by and with the advice and consent of the board, shall adopt such **by-laws** for the promotion, paroling, and final discharge of inmates as may be considered mutually beneficial for the institution and the inmates. The discharge-of any boy or girl pursuant to said by-laws, or having arrived at the age of twenty-one, shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed.

3496. If any **person** or persons shall entice or attempt to **entice away** from said school any boy or girl legally committed to the same, or who shall knowingly harbor, conceal, or aid in harboring or concealing any boy or girl who shall have escaped from the school, such person shall, upon conviction thereof, be punished by **fine** not exceeding two hundred dollars ($200) or imprisonment in the state penitentiary not exceeding two years. Any sheriff or other officer authorized to make arrests, or any officer or employee of the school shall have power, and it is hereby made his duty, to arrest any inmate who shall have escaped from said school and return him or her thereto. The superintendent shall use all proper means for the apprehension of such escaped inmate, and for this purpose he shall offer a reward, not to exceed twenty-five dollars ($25) in each case.

3497. Authority is hereby given by the board of public lands and buildings to transfer all **feeble-minded** children who are now committed to the industrial school, or who may hereafter be committed thereto to the Nebraska institution for the feeble-minded youth at Beatrice, Nebraska.

3498. That chapter 75, entitled Reform School, as heretofore existing, is hereby repealed; *Provided*, that such repeal shall not affect any person heretofore ordered confined therein under the provisions of section 5 of said chapter 75.

Secs. 3499 to 3504. "An act to establish and locate a '**girls' industrial school for juvenile delinquents**;' to provide for the government, duties of officers, and methods of commitments and transfer; to make appropriation for erection of necessary buildings, and to provide for letting contracts therefor." 1891, p. 293. In force March 4. (Secs. 2 and 8 to 10 omitted.)

3499. There shall be **established** in the state of Nebraska an institution to be known and designated as the "girl's industrial school for juvenile delinquents."

3500. The girls committed to the school shall be instructed in the principles of morality, self-government, domestic duties, and such other branches of knowledge as are taught in the public schools of the state. The board may further provide for **instruction** in such light, practical industries as may be best suited for their age, sex, and capacity.

3501. The **government** of the school shall be by and under the supervision of the board of public lands and buildings, who shall have power to appoint a superintendent and such other officers as the wants of the institution may require. All officers and employees, except the superintendent, book-keeper, engineers, and farmer or gardener, shall be women. Until the opening of the school, only the **superintendent** shall be appointed, and it shall be his duty to look after the construction of buildings and such other improvements as may be authorized by the board. His **duties** shall be, first (1), to appoint employees to fill such positions as the board may determine; second (2), to make a monthly report to the board of the general condition of the school; third (3), to make at the close of each year an inventory, giving the number, condition, and relative value of all property belonging to the school; also for all purchased and destroyed during the year; fourth (4), to keep an account of all daily expenditures and certify the same to the board at the end of each month; fifth (5), to submit with the monthly report an itemized statement of all cash received and **expended**; sixth (6), to make such recommendations and suggestions as may subserve the interests of the school.

3502. The **book-keeper** shall also be the steward of the school, and in the absence of the superintendent, shall perform his duties. His regular duties shall be such as the board shall prescribe.

3503. When the **school** is ready to open the board shall **transfer** all girls belonging to the "state industrial school for juvenile delinquents" to the "girls' industrial school for juvenile delinquents;" also all of the unused salary of the lady teacher and assistant teacher; the wages of the seamstress and one cook; a *pro rata* amount of the unexpended living expense and clothing funds; all of which shall be transferred by the state treasurer from the state industrial school to the girls' industrial school, which amount shall be ascertained and certified to the state treasurer by the superintendent of the state industrial school and the secretary of the board, and when so transferred shall be paid out on proper vouchers and warrants.

3504. Until further provisions are made, all **proceedings**, services of order, examinations, commitments, and other provisions necessary to give this act full force and effect shall be made and carried out in accordance with sections five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), and twelve (12) of chapter seventy-five (75) of the Compiled Statutes of Nebraska, which said sections are hereby made a part of this act and shall therefore govern all commitments of girls who are fit subjects for an industrial school.

Secs. 3505 to 3509. "An act providing for the establishment and government of the Nebraska industrial home and making appropriations therefor." 1887, p. 466. In force July 1.

3505. There shall be **established** in the state of Nebraska an institution to be designated and known as the Nebraska industrial home.

3506. Besides shelter and protection, the **object** of said institution shall be to provide employment and means of self-support for penitent women and girls, with a view to aid in the suppression of prostitution.

3507. The **government** of the "Nebraska industrial home" shall be by and under the supervision of the trustees of the "Woman's Associate Charities of the state of Nebraska," and their successors in office, who shall receive no compensation for their services, but shall be reimbursed actual and necessary expenses incurred in the discharge of the duties this act makes incumbent upon them, not to exceed the sum of five hundred dollars ($500) in any one year; *Provided*, That nothing herein contained shall be so construed as to prevent the "board of public lands and buildings" from establishing rules and regulations for the government of such home in any manner.

3508. Said trustees, by and with the advice and consent of the governor, shall appoint a superintendent, a steward, a teacher or teachers, and such other **officers** as in their judgment the wants of said home may require, and fix their salaries; and, by and with the advice and consent of the governor, may remove the same. All such officers shall be women.

3509. Within ten days preceding the meeting of each regular session of the legislature, said board and said **trustees** jointly shall furnish to the governor a printed **report** of their action and an estimate of the expenses of said home, together with a statement of the receipts and disbursements of funds; and during the first week of the session of the legislature, at least ten copies of said report shall be delivered to each member thereof. The said report shall show the names and residences of trustees of the "Woman's Associate Charities of the state of Nebraska," the condition of said home, and names of the regular officers and salary of each, the number of persons who have been inmates, the average number during each year, the discipline prescribed, the studies and industries pursued, the expenses per capita based on an average yearly numbers, and such other information as may be deemed important, or the governor requests.

CHAPTER 44.—PUBLIC INSTRUCTION.

SCHOOLS.

Secs. 3510 to 3726, except secs. 3618, 3619, 3625, 3626, and 3669 to 3698. "An act to establish a system of public instruction for the state of Nebraska." 1881, p. 331. In force March 1. (Repealing: act of 1867, p. 80, and its supplementary act of 1871, p. 96; act of 1869, p. 115; act of 1873, G. S., 982; act of 1875 p. 208, and acts amendatory of the above.)

SUBDIVISION I.—SCHOOL DISTRICTS.

3510. The term **school district** as used in this chapter is declared to mean the territory under the jurisdiction of a single school board authorized by this chapter. The term **school** shall be construed to mean a school under the jurisdiction of a school board authorized by this chapter.

To state a cause of action against a school district, facts must be averred which show that the supposed indebtedness was such as the district could lawfully incur. 12, 241 (11 N. W., 311).

3511. Every duly organized school district shall be a **body corporate** and possess all the usual powers of a corporation for public purposes, by the name and style of "school district number —— of —— county," and in that name may sue and be sued, purchase, hold, and sell such personal and real estate as the law allows.

3512. Each organized **county** not already **divided into** school **districts** or any part of such counties not so divided shall be divided by the county superintendent into as many school districts as may be necessary.

3513. **New districts** may be formed from other organized districts, and boundaries of existing districts may be changed under the following conditions only: *First*—The county superintendent shall have discretionary power to create a new district from other organized districts, upon a petition signed by one-third of the legal voters in each district affected. *Second*—The county superintendent shall have discretionary power to change the boundary of any district upon petitions signed by one-half of the legal voters in each district affected. *Third*—The county superintendent shall not refuse to change the boundary line of any district, or to organize a new district when he shall be asked to do so by a petition from each school district affected, signed by two-thirds of all the legal voters in such district. A notice of said petition, containing an exact statement of what changes in district boundaries are proposed, and when the petition is to be presented to the county superintendent, shall be posted in three public places, one of which places shall be on the outer door of the school house, if there be one in each district affected, at least ten days prior to the time of presenting the petition to the county superintendent; *Provided*, That changes affecting cities shall be made upon the petition of the board of education of the district or districts affected. *Fourth*—Two districts may be made from one by the county superintendent upon a petition from each district proposed, signed by a majority of the voters in each district proposed. Two districts may be consolidated into one district upon petitions from each district signed by two-thirds of the legal voters in each district. One district may be discontinued and its territory attached to other adjoining districts upon petitions signed by one-half of the legal voters in each district affected. *Fifth*—A list or lists of all the legal voters in each district affected, made under the oath of a resident of each district affected, together with an oath of a resident of each district, that the legal notice provided in the third clause of this section has been properly posted, shall be given to the county superintendent when the petition is presented. *Sixth*—No new districts shall be formed between the first Tuesday of April and the first day of October. *Seventh*—No new district shall be formed containing less than four sections of land, nor shall any district be reduced by division or otherwise so as to contain less than that amount, unless the district be so formed, or the part of a district remaining after division shall have an assessed valuation of property of not less than twelve thousand dollars. No district shall be formed extending more than six miles in any one direction upon section lines; *Provided,* That when streams or water-courses make it impracticable to form districts containing four sections, then the county superintendent may form districts with less than four sections without regard to valuation. When streams of water make it impracticable for children to attend school in their own district, the county superintendent shall have authority, and it shall be his duty, when requested by the parents of such children, to attach to adjoining districts such territory as he may deem necessary for the purpose of giving said children school privileges. *Eighth*—The county superintendent shall file in his office all petitions that have been granted for change of boundaries or for the formation of new districts, and such petitions shall be *prima facie* evidence of the boundaries of districts; and all conflicting records of boundaries shall be made to correspond with the petitions so filed.

Amended 1883, p. 288; 1885, p. 319; 1889, p. 540. To give the superintendent power to change district boundaries there must be a petition of one-third of the legal voters. In such a case he is not liable to the district for the manner he exercises his powers. **23,** 661 (37 N. W., 493); **28,** 491 (44 N. W., 660). This decision may be appealed from. **25,** 403 (41 N. W., 256). Superintendent may attach land to another district where necessary to give children school privileges, and his action cannot be questioned collaterally. **18,** 648 (26 N. W., 469).

3514. Whenever the county superintendent of any county shall form a **new district** it shall be duty of the said superintendent to deliver to a taxable inhabitant of such district a **notice** in writing of the formation of such district, describing its boundaries, and specifying the time and place of holding the first meeting, which notice, with the fact of such delivery, shall be entered upon the record by the superintendent.

3515. The said notice shall also direct such inhabitant to **notify** every qualified **voter of** such district, either personally or by leaving a written notice at his or her place of residence, of the time and place of holding said **meeting,** at least five days before the time appointed therefor; and it shall be the duty of such inhabitant to notify the qualified voter of said district accordingly.

3516. The said inhabitant, when he shall have notified the qualified voters as required in said notice, shall endorse thereon a **return,** showing such notification with the date or dates thereof, and deliver such notice and return to the chairman of the meeting.

3517. The said chairman shall deliver such **notice** and return to the director chosen at such meeting, as hereinafter provided, who shall **record** the same at length in a book, to be provided by him at the expense of the district, as a part of the records of such district, which record shall be *prima facie* evidence of the facts therein set forth, and of the legality of all proceedings, in the organization of the district prior to the first district meeting; but nothing in this section contained shall be so construed as to impair the effect of the record kept by the county superintendent as evidence.

Requires the act of board or the two disinterested members to declare the office of district treasurer to be vacant. **22,** 52 (33 N. W., 480).

3518. When a **new district** is formed in whole or in part from one or more districts possessed of a school house or other **property,** the county superintendent, at the time of forming such new district, or as soon thereafter as may be, shall ascertain and determine the amount justly due to such new district from any district or districts out of which it may have been, in whole or in part, formed, which amount shall be ascertained and determined as nearly as practicable according to the relative value of the taxable property in the respective parts of such former district or districts at the time of such division, and the fact that such school house or other property is not paid for shall not deprive such new district of its proportionate share of the value thereof; *Provided*, That such new district shall remain bound for such **indebtedness** to the same extent as though the new district had not been formed; unless in case of indebtedness not bonded the same shall be adjusted as hereinafter provided.

Taxes cannot be levied on territory detached after taxes voted. **9**, 337 (2 N. W., 712). Old district no authority to use funds set apart to new district. **4**, 267. Where new district formed out of part of old, superintendent must apportion the property before action will lie. **17**, 177 (22 N. W., 360). Cited, **13**, 170 (12 N. W., 921).

3519. If such old district shall be subject to any **bonded indebtedness,** and the amount to which such new district shall be entitled on account of any such property shall not exceed its proportionate share of such bonded indebtedness, the amount to which such new district shall be entitled as aforesaid shall be **apportioned** so as to come due in installments proportionately at such times as the original indebtedness shall become due to the creditors of the old district.

3520. The amount of such **proportion,** when so ascertained and determined, shall be certified by the county superintendent to the county clerk, who shall present the said amount to the **county board** at the session next succeeding, whose duty it shall be at the proper time or times to **assess** the same upon the taxable property of the district retaining the school house or other property of the former district, in the same manner as if the same had been authorized by a vote of such district, and the money so assessed shall be placed to the credit of the new district.

3521. **When collected,** such amount shall be **paid** over to the treasurer of the new district, to be applied to the use thereof in the same manner, under the direction of its proper officers, as if such sum had been voted and raised by said district for building a school house or other district purposes.

3522. Whenever, by the division of any district, the **school house** or **site** thereof shall no longer be conveniently located for school purposes, and shall not be desired by the district in which it may be situated, the county superintendent of the county in which such school house and site shall be located may, when ordered by the district, advertise and sell the same at public or private sale and apportion the proceeds; *Provided*, That when **sold** at private sale such sale shall not be binding until approved by the district interested.

3523. The **money** arising from the sale of school house and site, or otherwise, except teacher's fund, shall be **divided** among the several districts created in whole or part from the divided districts as nearly as practicable in proportion to the taxable property of the districts formed in whole or in part by such division.

3524. **Money on hand** belonging to the teachers' fund of said district shall be **divided** in proportion to the number of scholars in each district at the time of said division. The money designated in this and the preceding section shall be divided at once, and not in the manner provided in section eleven (11) of this subdivision.

3525. Whenever a new district shall be organized from the territory of a former district, and there shall be any **indebtedness** of such former district which shall **not** be **bonded,** such unbonded indebtedness shall be taken into account in estimating the sum due from the old to the new district on account of school house or other property, and such new district shall be entitled to only the value of its proportionate share of such property after deducting its like share of such indebtedness.

3526. Every **change in** district **boundary** lines must be reported as soon as made to the county clerk and the county treasurer, by the county superintendent; and the county superintendent shall keep in the office of the county clerk a map of the school districts of the county, which map shall be revised as often as the boundary lines of districts are changed or new districts formed. *The county superintendent shall also report to the county treasurer the necessary changes to be made upon the **tax** lists of the county. Upon receiving said notification, it shall be the duty of the county treasurer to adjust the tax list of the county in accordance with the change of district boundaries, so that the uncollected taxes levied upon property that has been transferred to another school district shall, when collected, be placed to the credit of the district to which such property has been transferred.

All after * added 1885, p. 321.

3527. Whenever a **district** is **dissatisfied with** the **division** of school property made by the county superintendent the points in dispute may be referred to three disinterested persons, no one of whom shall be a resident of either district interested in the matter at issue, one to be chosen by the school board of each district, and these two to choose a third, and the decision of any two of them shall be final.

3528. The **manner of proceeding** shall be substantially as follows: The district desiring an arbitration shall make a demand in writing of the county superintendent within ten days after said superintendent has made his award. The county superintendent shall notify the other district or districts and direct them to choose arbitrators. The county superintendent shall appoint a time and place for the hearing, at which the arbitrators shall proceed immediately to hear and determine the matter at issue according to justice and right, taking all the circumstances into consideration.

3529. The **award** of arbitrators shall be in writing and shall be filed with the county superintendent, and shall be final; *Provided*, That if no award is made by the committee within thirty days from the day of arbitration, the division made by the county superintendent shall be legal and valid.

3530. The **fees** of such arbitration shall be as follows: Each person engaged as arbitrator shall receive two dollars per day during the time necessarily occupied, to be paid equally by the districts.

3531. That when persons living in **two** or more **counties** desire to form a school **district,** it shall be the duty of the superintendents of the respective counties to authorize the said persons to organize such district, and the reports contemplated in this chapter shall be made to the superintendents of each county, parts of which form the district, of such property or children as may be within the limits of each such organized county.

SUBDIVISION II.—DISTRICT MEETINGS.

3532. The **annual** school **meeting** of each school district shall be held at the school house, if there be one, or at some other suitable place within the district, on the last *Monday in June of each year. The officers elected as hereinafter provided shall take possession of the office to which they have been elected upon the second Monday of July,* and the school year shall commence with that day.

Amended 1885, p. 322. * to * substituted for wording of original act, 1889, p. 542. Election cannot be adjourned. **15,** 444 (19 N. W., 682).

3533. **Special meetings** may be called by the district board, or any one of them, on the written request of any five legal voters of the district, by giving the notice required in the next succeding section; and in all notices of special meetings the object of the meeting shall be stated, and no business shall be transacted at such meetings except such as is mentioned in the call.

3534. All **notices** of annual or district **meetings,** after the first meeting has been held as aforesaid, shall state the day, hour, and place of meeting (which place shall be within the district), and shall be given at least fifteen days previous to such meeting by posting up copies thereof in three public places within the district; but no annual meeting shall be deemed illegal for want of such notice.

3535. Every **person,** male or female, who has resided in the district forty days and is twenty-one years old, and who owns real property in the district or personal property that was assessed in the district in his or her name at the last annual assessment; or who has children of school age residing in the district, shall be **entitled to vote** at any district meeting.

Amended 1883, p. 289; 1889, p. 542. This is not in conflict with constitution. Women are also eligible to office of school trustee. **15,** 444 (19 N. W., 682).

3536. If any **person** offering to vote at a school district meeting shall be **challenged** as unqualified, by any legal voter in such district, the chairman presiding at such meeting shall declare to the person challenged the qualifications of a voter, and if such person shall state that he or she is qualified, and the challenge shall not be withdrawn, the said chairman shall administer to him or her an **oath,** in substance, as follows: "You do solemnly swear (or affirm) that you are twenty-one years of age, that you have resided in this school district for forty days last past, that you own real property in the district or personal property that was assessed in your name at the last assessment (or have children of school age residing in the district), so help you God." And every person taking such oath shall be permitted to vote on all questions proposed at such meeting.

3537. If any person so challenged shall **refuse to take** such **oath,** his or her **vote** shall be **rejected,** and any person who shall willfully take a false oath, or make a false affirmation under the provisions of the preceding section, shall be deemed guilty of perjury, and be punished accordingly.

3538. When any question is taken in any **other** manner than by **ballot,** a **challenge** immediately after the vote has been taken, and previous to an announcement of the vote by the chair, shall be deemed to be made when offering to vote, and treated in the same manner.

3539. The qualified **voters** in the school district, when lawfully assembled, shall have power to adjourn from time to time, as may be necessary, to **designate a site** for a school house, by a vote of two-thirds of those present, and to change the same by a similar vote at any *annual meeting; *Provided,* That in any school district where the school house is located three-fourths of one mile or more from the center of such district, such school house site may be changed to a point nearer the geographical center of the district by a majority vote of those present at any such school meeting.

3540. When no **site** can be **established by** such inhabitants aforesaid, the county **superintendent** of the county in which the district is situated shall determine where such site shall be, and his determination shall be certified to the director of the district, and shall be final, except that such decision may be changed by the county superintendent on a written request of two-thirds of the qualified voters of the district.

3541. The said qualified **voters** shall also have power, at any annual or special meeting, to **direct** the **purchasing** or leasing of any appropriate **site,** and the building, hiring, or purchasing of a school house, and the amount necessary to be expended the succeeding year, and to vote a tax on the property of the district for the payment of the same. Not to conflict with section 2.

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* "Regular" changed to annual, 1889, p. 513.

Same change as preceding section, 1889, p. 543. School board cannot exceed authority conferred upon it by the district meeting in making expenditures for school house. **10**, 242 (4 N. W., 1023.) Board cannot contract for new building only with reference to funds on hand. Money must be first collected before being appropriated. **4**, 361.

3542. The legal **voters** at any annual meeting shall **determine** by vote the **number of mills** on the dollar of the assessed valuation which shall be **levied** for all purposes—except for the payment of bonded indebtedness and purchase or lease of school house—which number shall not exceed twenty-five (25) mills in any year. The tax so voted shall be reported by the district board to the county clerk, and shall be levied by the county board, and collected as other taxes.

3543. The legal **voters** may also, at such meeting, **determine** the number of **mills**, not exceeding ten mills on the dollar of assessed valuation, which shall be expended **for** the **building**, purchase, or lease of school house in said district, when there are no bonds voted for such purpose, which amount shall be reported levied and collected as in the preceding section; *Provided*, That the aggregate number of mills voted shall not exceed twenty-five (25) mills.

3544. The **tax** levied and collected, as provided by the preceding section, shall be **expended** under the direction of the district made at the annual meeting, or in absence of such direction then such tax thall be expended as the district board of the district may direct. Money remaining in the treasury after the purpose for which it was raised has been accomplished, and after all debts for which the fund is liable have been discharged, may be transferred to any other fund of the district at any district meeting.

Amended 1883, p. 290; 1889, p. 544.

3545. They may also **determine** at each annual meeting the length of **time** a **school** shall be **taught** in the district the ensuing year, which, to entitle the district to any portion of the state fund, shall not be less than three months by a legally qualified teacher in the district which has less than thirty-five pupils, nor less than six months in districts that have between thirty-five and one hundred pupils, inclusive, nor less than nine months in districts where there are more than one hundred pupils; and whether the money apportioned or voted for the support of the school therein shall be applied to the winter or summer term or a certain portion to each; *Provided*, That in case of epidemic sickness prevailing to such an extent that the school board in any district may deem it expedient to close any or all schools within their district, or if, on account of the destruction of the school house, it shall be impossible to continue the school, such closing of schools shall not prevent any district from drawing its proper share of the state apportionment. Such sickness or destruction of school house shall be sworn to by the district board, which oath shall be filed with the county superintendent within ten days after the annual school meeting.

Amended 1883, p. 290; 1889, p. 544.

3546. Said qualified **voters** shall also, at any annual or special meeting, authorize and **direct** by a two-thirds vote the **sale of** any school **house**, site, building or other property belonging to the district when the same shall no longer be needed for the use of the district; and when real estate is sold, the district may convey the same by deed, signed by the moderator of the district, and such deed, when acknowledged by such officer to be the act of the district, and may be recorded in the office of the recorder of deeds of the county in which the real estate is situated, in like manner as other deeds.

Amended 1889, p. 545.

3547. They may also give such **directions** and make such provisions as they shall deem necessary, **in relation to** the **prosecution or defense** of any proceeding in which the district may be a party, or interested.

SUBDIVISION III.—DISTRICT OFFICERS.

3548. The qualified voters of every new district, when assembled pursuant to legal notice, and all existing districts at their annual meetings, shall elect by ballot from the qualified voters of such district a **moderator** for three years, a **director** for two years, and a **treasurer** for one year; and at the expiration of their respective terms of office, and regularly thereafter, their several successors shall be elected for the term of three years each, and all officers so elected shall hold their offices till their successors are elected or appointed, and qualified; *Provided*, That officers of existing organized districts shall continue and discharge the duties of their respective offices until the expiration of the same.

3549. When a new district is organized and **officers** elected at any other time than at the annual meeting, the time intervening between the date of such organization and the beginning of the next school year shall constitute the first year in the **term** of such officers.

Amended 1885, p. 322.

3550. Within ten days after their election these several officers shall file with the director a written **acceptance** of the office to which they shall have been respectively elected, which shall be recorded by said director.

3551. Every such school **district** shall be deemed **duly organized** when any two of the officers elected at the first meeting shall have filed their acceptance as aforesaid.

3552. In case the inhabitants of any district shall **fail to organize** the same, in pursuance of such notice as aforesaid, the said county superintendent shall give a new notice in the manner hereinbefore provided, and the same proceeding shall be had thereon as if no previous notice had been delivered.

13, 468 (14 N. W., 382).

3553. In all cases where the county **superintendent** of any county shall form a school district therein, and where no election for school district officers shall be held therein, it shall be the duty of the county superintendent of the county in which such district is situated to **appoint** the **officers** of such district from the legal voters thereof, which officers thus appointed shall severally file with the director a written acceptance of the offices to which they shall have been appointed, which shall be recorded by the director.

3554. Every such school **district** shall be deemed **duly organized**, whenever any two of the officers thus appointed shall have filed their acceptance as aforesaid, and such school district and its officers shall be entitled to all the rights, privileges, and immunities, and be subject to all the duties and liabilities conferred upon school districts by law.

3555. Every school district shall, in all cases, be **presumed** to have been legally **organized** when it shall have exercised the franchises and privileges of a district for the term of one year.

13, 79 (12 N. W., 927).

3556. District officers appointed to fill **vacancies** shall hold their office until the *beginning of the next school year. Officers elected at a special meeting shall serve for the remainder of the unexpired term and until their successors are elected and qualified.

All after *, as it now reads, added 1889, p. 545.

3557. **No person** holding a school district office shall be employed to teach in the district of which *he is an officer, unless upon a petition signed by two-thirds of the legal voters of the district, which petition shall be filed with the papers of the district. *The contract of such officer shall be made by the other members of the district board.

*Original act read "district in which he resides"; amended and all after * added 1883, p. 291.

3558. Whenever a **director** or moderator **refuses** to sign orders on the treasurer, or the treasurer thinks best to refuse the payment of orders drawn upon him, the difficulty shall be referred for adjudication to the county superintendent, who shall proceed at once to investigate the matter, and if he finds that the officer complained of refuses through contumacy or for insufficient reasons it shall be the duty of the superintendent, on behalf of the district, to apply to the proper court for a writ of **mandamus** to compel the officer to perform his duty.

SUBDIVISION IV.—DISTRICT OFFICERS, POWERS AND DUTIES.

3559. The **moderator** shall have **power,** and it shall be his duty, to preside at all meetings of the district, to countersign all orders upon the treasury for moneys to be disbursed by the district, and all warrants of the director on the county treasurer for moneys raised for district purposes, or apportioned to the district by the county superintendent; but if the moderator shall be absent from any district meeting, the qualified voters present may elect a substitute to preside at the meeting.

3560. If, at any **district meeting,** any **person** shall conduct himself or herself in a **disorderly** manner, and after notice of the moderator or person presiding shall persist therein, the moderator or person presiding may order him or her to withdraw from the meeting, and on his or her refusal may order any constable or any other person or persons to take him or her into custody until the meeting shall be adjourned.

3561. Any **person** or persons who shall refuse to withdraw from such meeting on being so ordered as provided in the preceding section, or who shall willfully **disturb** such **meeting,** shall, on conviction thereof, be **fined** a sum not exceeding twenty dollars, which fine shall be paid into the school fund of the district.

3562. The **treasurer** of each district shall, within ten days after the election, execute to the county and file with the director a **bond** of not less than five hundred dollars in any instance, nor less than double the amount of money, as near as can be ascertained, to come into his hands as treasurer and at any one time, with sufficient sureties to be approved by the director and moderator, conditioned for the faithful discharge of the duties of his office; such bond when approved shall be filed by the director in the office of the county clerk of the county wherein the school district is situated; and if the treasurer shall fail to execute such bond, his office shall be declared vacant by the district board, and the board shall immediately appoint a treasurer, who shall be subject to the same conditions and possess the same powers as if elected to that office.

Amended 1883, p. 291.

3563. It shall be the **duty of** the **treasurer** of each district to apply for and receive from the county treasurer all school moneys apportioned to the district or collected for the same by said county treasurer, upon order of the director, countersigned by the moderator, and to pay over on the order of the director, countersigned by the moderator of such district, all moneys received by him.

Treasurer can only draw money on warrant properly drawn and countersigned. **11,** 285 (9 N. W., 45.) A school district has no authority to release its treasurer from liability for money lost or misapplied by him. **10,** 296 (4 N. W., 1001).

3564. The **treasurer** shall keep a **book** furnished by the district, in which he shall enter all the moneys received and disbursed by him, specifying particularly the source from which the money has been received, and to what fund it belongs, and the person or persons to whom, and the object for which the same has been paid out. He shall present to the district, at each annual meeting, a **report** in writing, containing a statement of all moneys received by him during the preceding year, and of the disbursements made by him, with the items of such disbursements, and exhibit the vouchers therefor, and at the close of the term of his office, shall settle with the district board, and shall hand over to his successor said books and all receipts, vouchers, orders, and papers coming into his hands as treasurer of the district, together with all moneys remaining in his hands as such treasurer.

3565. It shall also be the **duty of** the **treasurer** to **appear** for and on behalf of the district **in all suits** brought by or against the same, whenever no other directions shall be given by the qualified voters in the district meeting, except in suits in which he is interested adversely to the district; and in all such cases the director shall appear for such district, if no other directions shall be given as aforesaid.

Action must be brought in the name of the district, and not in that of the treasurer. **11,** 285 (9 N. W., 45).

3566. Whenever by the failure of his sureties, or otherwise, the official **bond of** the district **treasurer** becomes in the opinion of the other members of the board **insufficient** to protect the district from loss, it shall be the duty of the director and moderator to demand additional security, or a new bond of the treasurer. If the treasurer refuse or neglect to procure a satisfactory bond and present it to the other members for approval within ten days after said demand, the said moderator and director may declare his office vacant, and proceed to call a district meeting to elect a new treasurer to fill the unexpired term; *Provided*, That nothing in this section shall be construed to interfere with the liabilities of principals and sureties in such bond, or the rights of sureties as defined by law regulating official bonds.

3567. The **director** shall be **clerk** of the district **board,** and of all district meetings when present, but if he shall not be present, the qualified voters may appoint a clerk for the time being, who shall certify the proceedings to the director to be recorded by him.

3568. The **director** shall **record** all proceedings of the district in a book furnished by the district, to be kept for that purpose, and preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and papers belonging to his office.

3569. The **director,** with the consent and advice of the moderator and treasurer, or one of them, or under their direction if he shall not concur, shall contract with and **hire** qualified **teachers** for and in the name of the district, which contract shall be in writing and shall have the consent of the moderator and treasurer, or one of them, endorsed thereon, and shall specify the wages per week or month as agreed by the parties, and a duplicate shall be filed in his office; *Provided*, That if the director shall refuse to make and sign such contract when directed so to do by the moderator and treasurer, then it may be made and signed by the moderator and treasurer. * The director shall notify the county superintendent at the time the contract is made of the length of the proposed term of school, when the school will begin, and of the name of the teacher. And no money belonging to the district shall be paid for teaching to any but legally qualified teachers.

All after * added 1883, p. 291. Director and treasurer may hire teacher without the assent of or notice to the moderator. **13,** 69 (12 N. W., 829). Does not prevent party in proper case from bringing suit in his own name. **19,** 565 (27 N. W., 638).

3570. Within ten days previous to the annual district meeting the **director** shall **take** the **census** of his district, and make a list in writing of the names of all the children belonging thereto, between the ages of five and twenty-one years, together with the names of all the taxpayers in the district. In case of the absence or inability of the director, such census shall be taken by the moderator or treasurer, or such person as they may appoint, and a copy of such list, verified by the oath of the person taking such census, by affidavit appended to or endorsed thereon, setting forth that it is a correct list of the names of all children belonging to the district between the ages of five and twenty-one years, and that it was taken within ten days preceding the annual meeting, shall be returned with the annual report of the director to the county superintendent; *Provided,* That in cities of the first and second classes thirty (30) days shall be allowed for taking said census. * Said census to be completed before July first.

All after * added 1889, p. 546.

3571. The **director** shall, with the concurrence of the moderator and treasurer, or either of them, **provide** the necessary appendages **for** the **school house,** and keep the same in good condition and repair during the time school shall be taught in said school house, and shall keep an accurate account of all expenses incurred by him as director. Such account shall be audited by the moderator and treasurer, and on their written order shall be paid out of the general school fund.

3572. He shall **present** at each **annual** meeting an itemized **estimate** of the amounts necessary to be expended during the ensuing year for school purposes, and for the payment of the services of any school district officer; but no tax for these purposes shall be voted at any special meeting. He shall also present to the annual meeting a statement of all orders drawn on the county treasurer, and the amount of each, and of all orders on the district treasurer, and the amount of each, for what purpose, and to whom given. * Before adjournment of each annual meeting the director shall read the minutes of the meeting and have the same corrected and approved by a majority vote of said meeting.

Amended and all after * added 1889, p. 546.

3573. He **shall give** the prescribed **notice** of the annual district meetings, and of all such special meetings as he shall be required to give notice of, in accordance with the provisions of this chapter, one copy of which for each meeting shall be posted on the outer door of the school house, if there be one.

3574. He **shall draw** and sign **all orders** upon the treasurer for all moneys to be disbursed by the district, and all warrants upon the county treasurer for moneys raised for district purposes, or apportioned to the district by the county superintendent, and present the same to the moderator, to be countersigned by him, and no warrant shall be issued until so countersigned. * No warrant shall be countersigned by the moderator until the amount for which the warrant is drawn is written upon its face. The **moderator** shall keep a **record** in a book furnished by the district, of the amount, date, purpose for which drawn, and name of person to whom issued, of each warrant countersigned by him.

All after * added 1883, p. 292. Treasurer cannot be compelled to respond to a demand made upon him for money, unless accompanied by an order drawn by the director and countersigned by the moderator. 4, 265. Subject to same defenses in hands of *bona fide* holder for value as against the payee. 4, 359.

3575. The **director** shall, within ten days after the annual district meeting, deliver to the county superintendent, to be filed in his office, a **report** under oath, showing the whole number of children belonging to the district between the ages of five and twenty-one years according to the census taken aforesaid; and any district board neglecting to take the enumeration and make return of the same shall be liable to said district for all school moneys which such district may lose by such neglect. Within ten days after the annual district meeting the director shall report to the county superintendent, to be filed in his office, a report under oath, showing: *First*—The number attending school during the year under five, and also the number over twenty-one years of age. *Second*—The whole number that have attended school during the year. *Third*—The whole number in the district between the ages of eight and fourteen years, inclusive. *Fourth*—The whole number in the district between the ages of eight and fourteen years, inclusive, that have attended school not less than twelve weeks during the school year. *Fifth*—The length of time the school has been taught during the year by a qualified teacher, the length of time taught by each teacher, and the wages paid to each. *Sixth*—The total number of days all scholars between the ages of five and twenty-one years have attended school during the year. *Seventh*—The amount of money received from the county treasurer during the year, and the amonnt of money expended by the district during the year. *Eighth*—The number of mills levied for all school purposes. *Ninth*—The kind of books used in the school. *Tenth*—Number of children to whom text books are furnished, and kind of books. *Eleventh*—The amount of bonded indebtedness. *Twelfth*—Such other facts and statistics as the superintendent shall direct.

Amended 1885, p. 323; 1889, p. 547.

3576. For the purpose of **attesting** school **reports** and other purposes connected with the administration of the school law, county superintendents are hereby authorized to administer the required oaths.

3577. It shall be the duty of the **director** to **furnish**, for the use of the annual meeting each year, a statement of the aggregate assessed **valuation** of all property in the district, and the amount of taxes, as near as may be, that will be collected for the use of the district.

Amended 1889, p. 548.

SUBDIVISION V.—DISTRICT BOARD, POWERS AND DUTIES.

3578. The moderator, director, and treasurer shall constitute the **district board**, *and in all meetings of the board two members shall constitute a quorum for the transaction of business. Meetings of the board may be called upon the agreement of two members, but all members shall have notice of the time and place of meeting.

All after * added 1885, p. 324. A contract made by persons calling themselves director and moderator of a school district is their individual contract, and not binding on the district. **4**, 255 Cited, **11**, 361 (9 N. W., 559).

3579. Immediately after the annual district meeting, and not later than the first Monday in July, said board shall make and deliver to the county superintendent, and also to the county clerk of each county in which any part of the district is situated, **reports** in writing, under their hands, **of all taxes voted** by the district during the current school year, to be levied on the taxable property of the district, and to be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; and when collected, to be paid over to the treasurer of the proper district on the order of the director, countersigned by the moderator of said district. *It shall be the duty of the county clerk to levy such taxes, if voted according to law.

Amended and all after * added 1889, p. 549. Moderator may be compelled by mandamus to sign reports to clerk. **11**, 361 (9 N. W., 559).

3580. The district board shall have the general **care of** the **school**, and shall have power to classify and grade the scholars in their district and cause them to be taught in such schools and departments as they may deem expedient; to provide a course of study which may include all studies necessary for a first grade certificate; and to make such rules and regulations as they may think necessary for the government and health of the scholars.

Rewritten 1883, p. 293.

3581. Said board may also admit to the district school **non-resident pupils,** and may determine the rate of tuition of such pupils and collect the same in advance.

All but first sentence of original section omitted 1883, p. 293.

3582. They may authorize or order the **suspension** or expulsion from the school, whenever in their judgment the interests of the school demand it, **of** any **pupil** guilty of gross misdemeanors or persistent disobedience, but such suspension shall not extend beyond the close of the term.

3583. They shall **purchase** or lease such **site for** a school **house** as shall have been designated by the district, in the corporate name thereof, and shall build, hire, or purchase such school house out of the fund provided for that purpose, and shall make sale and conveyance of any site or other property of the district, when lawfully directed by the qualified voters at any annual or special meeting.

Proviso of original act omitted 1885, p. 324.

3584. The district shall not in any case build a **stone** or **brick** school **house** upon any site, without having first obtained a **title** in fee to the same; and also that they shall not in any case build a frame school house on any site for which they have not a title in fee, without the privilege to remove the same when lawfully directed to do so by the qualified voters of the district at any annual or special meeting.

3585. The district **board** shall apply and **pay** over all school **moneys** belonging to the district, in acccordance with the provisions of law regulating the same, as may be directed by the district, but no school money apportioned to any school district shall be appropriated to any other use than the payment of teachers' wages; and no part thereof shall be paid to any teacher who shall not have received a certificate, as required in this chapter, before the commencement of his or her school.

3586. The said **board** shall have the **care** and custody **of** the school **house** and other property of the district, except so far as the same shall be confided to the custody of the director.

3587. Every school district **office** shall become **vacant** by the death, resignation, or removal from office, or removal from the district of the incumbent, or by his absence from the district for a continuous period of sixty days at one time.

3588. The said **board** shall have power to **fill** by appointment any **vacancy** that may occur in their number, and it shall be their duty to fill such vacancy after its occurrence; *Provided*, That in case said board shall, from any cause, fail to fill such vacancy, the same may be filled by election at a special school district meeting called for that purpose, by the qualified voters present, which meeting shall be called in the same manner and be subject to the same regulations as other special school district meetings.

Amended 1889, p. 549. Appointment by one member of board not good, but if district permit such officer to act, district is bound by his deeds. 9, 55 (2 N. W., 235.)

3589. When by a **division of** a **district** no more than one officer is left in the old district, the county superintendent shall appoint to fill the **vacant offices,** suitable persons, who shall hold their offices until the second Monday in July after the next annual meeting, and until their successors are elected and qualified.

Amended 1885, p. 325.

3590. **No school officer** shall be **party to** any school **contract** for building or furnishing supplies, except in his official capacity as a member of the board.

SUBDIVISION VI.—HIGH SCHOOL DISTRICTS.

3591. Any district containing more than one hundred and fifty children, between the ages of five and twenty-one years, may elect a **district board** consisting **of six trustees**; *Provided*, The district shall so determine at an annual meeting by a vote of a majority of the voters attending such meetings. When such change in the district board shall have been voted, the voters at such annual meeting shall proceed immediately to elect two trustees for the term of one year, two for the term of two years, and two for the term of three years, and annually thereafter two trustees shall be elected, whose term of office shall be three years, and until their successors shall have been elected and qualified.

Amended 1885, p. 325; 1889, p. 550.

3592. Within ten days after their election, such trustees shall file with the directors a written **acceptance of** the **office** to which they have been elected, and shall annually elect from their own number a moderator, a director, and a treasurer, and for cause may remove the same, and may appoint others of their own members in their places, who shall perform the duties prescribed by law for such officers in the primary school districts in this state, except as hereinafter provided. The trustees shall have power to fill any vacancy that may occur in their number till the next annual meeting. Whenever in any case the trustees shall fail, through disagreement or neglect, to elect the officers named in this section within twenty days next after their annual meeting, the county superintendent of the county in which such district makes its annual report shall appoint the said officers from the members of said trustees.

3593. Said **trustees** shall have **power** to classify and grade the scholars in such district, and cause them to be taught in such schools and departments as they may deem expedient; to establish in such district a high school when ordered by a vote of the district at any annual meeting, and to determine the qualifications for admissions to such schools, and the price to be paid for tuition on any branch therein; to employ all teachers necessary for the several schools of said district; to prescribe courses of study and text books for the use of said schools, and to make such rules and regulations as they may think needful for the government of the schools, and for the preservation of the property of the district, and also to determine the rates of tuition to be paid by non-resident pupils attending any school in said district.

3594. The said **trustees** shall **present** at each annual meeting a **statement** in writing, of all receipts and expenditures on behalf of the district for the preceding year, and of all funds then on hand, and an estimate of the amounts necessary to be raised by the district, in addition to the money to be received from the primary school fund and from other sources, for the support of the schools of said district for the ensuing year, and for incidental expenses thereof; and the said district may at the annual meeting vote such sums, to be raised by tax upon the taxable property of said district, as may be required to maintain the several schools thereof for the year.

SUBDIVISION VII.—COUNTY SUPERINTENDENT.

3595. There shall be a county **superintendent** in each organized county, whose term of service shall be two years, and who shall be **elected** at the same time and in the same manner as other county officers. *It shall be the duty of the county clerk to notify the state superintendent of the election of the county superintendent at the time said election is ascertained.

All after * added 1883, p. 294.

3596. The county commissioners, or a majority of them present at the first regular session of each year, shall determine the **compensation** to be paid to the county superintendent, but such compensation shall not be less than twelve hundred dollars per annum in counties having a school population of five thousand or more; and not less than one thousand dollars per annum in counties having a school population of four thousand and less than five thousand; and not less than eight hundred per annum in counties having a school population of three thousand and less than four thousand; and not less than five hundred dollars per annum in counties having a school population of two thousand and less than three thousand; and in counties having a school population less than two thousand, a per diem of not less than three and one-half dollars or more than five dollars for each day actually employed in the duties of his office. The number of days necessary for the duties of his office shall be determined by the county superintendent, but the number of days so employed shall not be less than the number of school districts in said county, and one day for each precinct thereof for the examination of teachers. The superintendent shall file in the office of the county clerk a sworn statement of his account.

Amended 1883, p. 294.

3597. The county superintendent shall **examine** all persons offering themselves as **teachers** for the public schools, and shall attend at the county seat upon the third Saturday in each month in the year for that purpose, and at such other times and places as he.may select, by giving not less than five days' notice in some paper published in his county, or, if there be no paper published in such conuty, then he shall cause to be posted up in three public places in the precinct where such examination is to take place, not less than five days prior to such examination, a notice of the time or place thereof. Any certificate granted at any other time or place than those specified above shall be null and void. And any county superintendent who shall violate the provisions of this section shall, upon conviction of the same, be fined in any sum not less than twenty-five dollars.

Amended 1883, p. 295.

3598. The county superintendent may **endorse a certificate** in force in any county in this state, or of any other state, without examination, and said endorsement shall render the said certificate valid in his county for such time as the superintendent may determine, not exceeding two years from the date of said endorsement, but in no instance for a longer time than said certificate was originally intended; *Provided*, That the superintendent shall have power to revoke said certificate for the same causes and in like manner as those granted by himself.

Teachers' certificate good in another county. **19**, 495 (27 N. W., 728).

3599. He shall grant **certificates** in such **forms** as shall be prescribed by the state superintendent of public instruction, licensing as teachers all persons whom on thorough and full examination he shall deem qualified in respect to good moral character, learning, and ability to instruct and govern a school; but no certificate shall be granted to any person who shall not pass a satisfactory examination in orthography, reading, writing, geography, arithmetic, physiology, English composition, and English grammar; *Provided*, That no person shall be entitled to receive more than three (3) third grade certificates.

3600. There shall be **three grades** of certificates of teachers to be granted by the county superintendent, in his discretion, to-wit: The certificate of the third grade shall be granted to persons who shall have passed satisfactory examination in the branches specified in the above section, which certificate shall license the holder thereof to teach in some special district, and shall not continue in force more than six months. The certificate of the second grade may be granted to any person of approved learning and character, who, in addition to the branches specified in the above section, shall pass a satisfactory examination in history of the United States, civil governments, book-keeping, blackboard drawing, and theory and art of teaching, which certificate shall be valid throughout the county for one year, unless sooner revoked. The certificate of the first grade shall be granted to no person who has not taught at least one year, with approved ability and success, and who shall not pass a satisfactory examination in all the branches required to obtain a second grade certificate, and in algebra, geometry, botany, and natural philosophy, which certificate shall be valid throughout the county in and for which it was granted for two years, unless sooner revoked.

3601. The county superintendent, or any authority or corporation authorized to grant certificates to teachers, may revoke any such **certificate** for any reason which would have justified the withholding thereof when the same was given; as for gross negligence of duty or for incompetency or immorality, which reasons shall not be spread on the records, unless requested by the teacher, but no certificate shall be **revoked** without **notice** by the superintendent, and an opportunity to explain or defend his conduct, if he desires such opportunity. No certificate shall be revoked exeept by the authority granting it, but the county superintendent shall report to the authority granting said certificate the fact that it should be revoked, giving his reasons therefor. The superintendent shall keep a record of all certificates granted and annulled by him, with the grade, date, and duration of each, and shall deliver such record, with all other books and papers belonging to his office, to his successor.

3602. It shall be the **duty of** the county **superintendent** to visit each of the schools of his county at least once in each year to examine carefully into the discipline and modes of instruction, and into the progress and proficiency of the pupils, and to make a record of the same, and to counsel with teachers and district boards as to the course of study to be pursued, and for the improvement of the instruction and discipline of the school; to note the condition of the school house and appurtenances thereto, and to suggest a place for new school houses to be erected, and for warming and ventilating the same, and for the general improvement of the school house and grounds; to promote, by public lectures and teachers' institutes, and by such other means as he may devise for the improvement of the schools in his county, and the elevation of the character and qualifications of the teachers thereof; to consult with the teachers and school boards to secure general and regular attendance of the children of his county upon the public schools.

3603. It shall be the duty of the county superintendent to **receive** all such **blanks** and communications as may be directed to him by the state superintendent of public instruction, and to dispose of the same in the manner directed by the state superintendent.

3604. The county superintendent shall **examine** into the correctness of the **reports** of the district boards, and may, when necessary, require the same to be amended, and shall endorse his approval on such as he shall find correct, and transmit duplicates thereof, together with such other information as may be required of him, to the state superintendent of public instruction, when required by said state superintendent.

3605. The county superintendents shall be **subjected to** such **rules** and instruction as the state superintendent of public instruction may from time to time prescribe, and they shall report annually to the superintendent of public instruction, at such times as he may direct, of the official labors performed, and of the general condition and management of the schools under their charge, and such other information as may be required of them by said superintendent.

3606. Whenever, by death, resignation, or removal, or otherwise, the **office** of superintendent shall become **vacant,** the county board shall have power to fill such vacancy.

3607. Should any **district neglect** to send in the **reports** required by section 2, subdivision V, of this chapter [3579], by the third Monday in May, it shall be the duty of the county superintendent to notify the officers of such districts that the report is due and should be sent at once.

3608. The county superintendent shall **report** on or before the first Tuesday in September of each year, to the superintendent of the **blind** asylum, the name, age, residence, and postoffice address of every person blind to such an extent as to be unable to acquire an education in the common schools, and who resides in the county in which he is superintendent, and also to the superintendent of the Nebraska institute for the deaf and dumb, the name, age, and postoffice address of every **deaf** and dumb person between the ages of five and twenty-one years who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools.

SUBDIVISION VIII.—STATE SUPERINTENDENT.

3609. The superintendent of public instruction shall **keep an office,** which shall be furnished for him, at the seat of government of the state, and he shall keep all books and papers pertaining to his office therein, subject at all times to the examination of the governor or auditor of state, or a committee from either branch of the legislative assembly.

3610. He shall **organize** teachers' normal **institutes** at such times and places as he shall deem practicable. He shall, as far as practicable, attend said institutes and provide proper instructors for the same, and in other ways seek to improve the efficiency of teachers, and advance the cause of education in the state.

3611. He shall **visit** such **schools** as he may have it in his power to do, and witness and advise with teachers and school officers upon the manner in which they are conducted.

3612. He shall **decide** disputed **points** in school **law,** and all such decisions shall be held to have the force of law till reversed by the courts.

3613. He shall prescribe **forms for** making all **reports** and regulations for all proceedings under the general school laws of the state.

3614. He shall cause to be printed, in pamphlet form, the **school laws** and laws relating to the school lands, with blank forms prescribed by him, and furnish each county superintendent with a sufficient nnmber to supply the district officers within his jurisdiction.

3615. He shall annually, on the first day of January, submit to the governor of the state a full **report** of the operations of his office during the year, which report shall contain a statement of the school funds of the state, and an account of the receipts and expenditures for the purpose of schools, a statement of the condition of the common schools and other educational institutions chartered or fostered by the state, embracing the number of schools of the several grades, the number and average compensation of the teachers, the names and compensations of county superintendents, the number of pupils attending the several schools, the enumeration of youth by counties, the value of school houses, sites, apparatus, and furniture, a statement of such plans as he may devise for the better management of the school funds and the school system, and such other statements as he may deem expedient to communicate relating to his office and popular education.

3616. He shall cause his **report** to be **printed** by the state printers, and shall deliver at the commencement of each regular session of the legislature one hundred copies thereof to the senate and four hundred copies to the house of representatives, and transmit one copy to each district director in the state and one to each county superintendent.

3617. He shall, semi-annually, on or before the third Monday in June and the last Monday in December, make an **apportionment of** the **funds** which are in the treasury and which are applicable to the support of schools, which apportionment shall be based upon the enumeration of youth reported to the state superintendent by the county superintendents.

Secs. 3618 and 3619. "An act to authorize the state superintendent of public instruction to appoint a deputy, to define the duties of the same, and to fix the salary of said deputy." 1891, p. 316. In force July 4.

3618. The superintendent of public instruction of the state of Nebraska shall have power to appoint a **deputy** superintendent of public instruction, and the said deputy may do and perform, in the absence or inability of the superintendent of public instruction, all the acts and duties that may be authorized and required to be performed by the superintendent of public instruction; and the superintendent shall be responsible for all the official acts of his deputy.

3619. Said deputy shall receive a **salary** of fifteen hundred dollars ($1500) per annum, to be paid by warrant of the auditor of public accounts on the treasurer, said warrant to be drawn monthly.

SUBDIVISION IX.—THE TEACHER.

3620. No person shall be accounted a **qualified teacher,** within the meaning of the school law, who has not a certificate in force from a county superintendent, or one as provided for in subdivision 14, section 19 of this chapter (Subdivision "Schools in cities") [3682], or a certificate or diploma from a state normal school of Nebraska, a certificate from the state superintendent of public instruction, or a diploma from a state normal school of another state, approved by the state superintendent of this state, *but such approval shall not be given until the holder of said diploma presents proof of successful teaching for one year in Nebraska, and presents a first grade county certificate given in this state.

All after * added 1885, p. 326. Statute prohibits school board from paying teacher who has no certificate; but the prohibition is on the school board and not on the teacher, and when once paid, it cannot be recovered back. 13, 55 (13 N. W., 16). Board may discharge a teacher found to be incompetent. 6, 173.

3621. Every teacher shall make a **monthly return** to the director of the district, of the number of pupils attending his or her school, the names and ages of each, the days attended, the studies pursued, and no teacher will be entitled to receive pay in full for a term's service till the term summary is properly filled out and approved by the director.

3622. In the absence of any agreement between the director and teacher to the contrary, **twenty days** shall constitute **a** school **month.**

3623. Permanent teachers of high character and broad scholarship, and who have a successful experience, may, upon examination by the state superintendent, or by a committee of three competent teachers appointed by him, receive a professional **state certificate,** which shall authorize the holder to teach in any public school in the state, without further examination; *Provided*, That no life certificate shall be in force after its holder shall permit a space of three years to lapse without following some educational pursuit, unless said certificate be endorsed by the acting state superintendent. *Provided further*, That graduates of colleges and universities of good standing, who have received a certificate of the first grade in this state and who shall have taught in any high school in the state with ability and success for at least three years, shall be entitled to a professional certificate without further examination.

3624. The **branches required** for a professional state certificate shall be the following, to-wit: Written arithmetic, United States history, reading and elocution, English grammar, common and physical geography with map drawings, physiology, algebra, natural philosophy, chemistry, composition and rhetoric, book-keeping, plane geometry, plane trigonometry, geology, zoology, botany, English literature, general history, intellectual philosophy, civil government, and school laws, and the theory and art of teaching.

Amended 1885, p. 327.

Secs. 3625 and 3626. "An act relating to the **study of physiology and hygiene** in the public schools, and examination therein of teachers' certificates." 1885, p. 332. In force June 5.

3625. **Provisions** shall be made by the proper school authorities **for instructing** the pupils in all schools supported by public money, or under state control, **in physiology** and **hygiene,** with special reference to the effects of alcoholic drinks and other stimulants and narcotics upon the human system.

3626. No certificate shall be granted to any person to teach in the public schools of the state of Nebraska, after the first day of January, eighteen hundred and eighty-six, who has not passed a satisfactory **examination** in physiology and hygiene, with special reference to the effects of alcoholic drinks and other stimulants and narcotics on the human system.

SUBDIVISION X.—TEACHERS' INSTITUTES.

3627. For the purpose of allowing teachers an opportunity to improve themselves in the art of teaching, **two kinds of** teachers' **institutes** shall be held in the state, viz.: normal institutes to be organized by the state superintendent, and county institutes to be organized by the county superintendents.

3628. **Normal institutes** shall be organized at such times and places as the state superintendent shall deem practicable. He shall fix the length of term, designate what counties shall be included, and provide competent instructors to conduct them.

3629. It shall be the duty of the county **superintendents** of the counties included in such district to **attend** such **institute,** at least one week, for the purpose of comparing notes with the state superintendent and other county superintendents on the methods of school work.

3630. For the purpose of defraying the **expenses** of these institutes there is hereby appropriated the entire institute fund of the county in which the institute is located; and the further sum of two dollars, to be paid out of the institute fund of any county from which any teachers go to attend said institute, for each teacher who attends from such county.

3631. To form a **fund to defray** the **expense** of institutes, each teacher examined for a certificate, or who has a certificate renewed or endorsed by the county superintendent, shall pay the sum of one dollar to the county superintendent, to which sum thus raised the county commissioners shall add each year that an institute is held in the county the sum of twenty-five dollars from the general fund of the county; and if they deem it desirable they may increase the amount to any sum they desire, not to exceed one hundred dollars. The county superintendent shall make a quarterly statement, under oath, to the county commissioners, of all money received by him for the institute fund, and of all money disbursed by him from said fund.

Amended 1883, p. 295.

3632. All **disbursements** from the institute fund shall be upon the order of the county superintendent, and upon bills approved by him, which bills shall be filed in his office. *The county superintendent may at his discretion revoke the certificate or refuse to grant a certificate to any teacher who refuses to attend the county institute. Should graduates from the elementary course of the normal school refuse to attend the county institute, it shall be the duty of the county superintendent to report such refusal to the principal of the normal school, who may at his discretion revoke the certificate of such normal graduate for such refusal to attend. The county superintendent shall notify the directors when the institute will begin, and all common schools shall be closed during the continuance of the institute.

Amended and all after * added 1883, p. 296.

SUBDIVISION XI.—SCHOOL FUNDS.

3633. For the purpose of affording the advantages of free education to all the youth of this state, the state **common school fund,** in addition to the funds derived from the sale of school lands and interest thereon, and fines and forfeitures as provided by statutes and the constitution, shall be further increased by annual **levy** and assessment of not to exceed 1½ mills upon the dollar valuation on the grand list of the taxable property of the state; and the amount so levied and assessed shall be collected in the same manner as other state taxes, and when collected shall be semi-annually distributed to the several counties of this state, in proportion to the enumeration of scholars, and be applied exclusively to the payment of teachers' wages.

3634. The county **treasurer** shall **collect,** or cause to be collected, the fines and **all moneys for school** purpose in his county, and take all proper measures to secure to each district its full amount of school funds, and all county treasurers shall report to the state treasurer and state auditor semi-annually, on or before the third Monday in April and the first Monday in November, and at such other times as the auditor may require, a statement showing the whole amount of moneys collected on account of state, county, and district school tax, and from all other sources respectively, noting the interest separately, and the amount received on account of licenses and fines, and from all other sources from which school funds are derived, together with a statement showing the amount paid out, to whom, and on what account, and at the same time the county treasurer shall pay over to the state treasurer all funds and moneys, from whatever source derived, belonging to the general school fund in his hands, and make a settlement thereof with the state treasurer.

Treasurer may maintain action to recover fines and liquor license money belonging to the school fund. **5**, 309; **9**, 352 (2 N. W., 722). Treasurer of county proper party to institute actions to see that each district has its full amount of school funds. **9**, 405 (2 N. W., 877).

3635. The **state treasurer** shall, semi-annually, on or before the third Monday in May and the first Monday in December, **make** a complete **exhibit** of all moneys belonging to the school fund of the state, as returned to him from the several counties, together with the amount derived from other sources, and deliver the same duly certified to the state superintendent; and within twenty days thereafter the **state** superintendent shall make the **apportionment** of said funds to such counties according to the *pro rata* enumeration of scholars in each county last returned from the county superintendent, and certify the apportionment of each to the county superintendent of the proper county and to the state auditor, who shall draw a warrant on the state treasurer in favor of the various counties for the amount so specified by the state superintendent.

3636. The several **county superintendents** shall immediately and within twenty days after receiving such apportionments, and after adding thereto all moneys received by the county treasurer on account of fines and licenses, **apportion** the entire amount as follows, to-wit: One-fourth of the whole amount to be distributed equally to the several districts in the county, and the remaining three-fourths of the whole to be distributed to the several districts in his county *pro rata*, according to the enumeration of scholars last returned by the directors of the various districts, and no district, city, or village which shall have failed to sustain a school for the length of time required by section 14, subdivision II, of this chapter [3545], shall be entitled to receive a portion of the fund.

3637. When a **new district** is formed from other districts where during the preceding school year school has been kept open the term required by law, such new district will be held and deemed to have had school the lawful time, and apportionment shall be made to it accordingly.

3638. In making the "one-fourth" apportionment each **fractional district** shall receive one-half as much as a full district.

3639. The county superintendent shall immediately after making such **apportionment** enter the same in a book kept for that purpose, and shall furnish the county treasurer with a certified copy of such apportionment, and each of the directors in the respective districts in his county a **certificate,** showing the amount due such district, which amount shall be subject to the order of the director on the county treasurer, when properly countersigned by the moderator.

3640. County **treasurers** are **not allowed** to charge a **per cent** for receiving and disbursing the state school appropriation.

3641. School district **treasurers** are **forbidden to lend** or use any part of the school moneys which may be in their hands under penalty of fine and imprisonment, under the provisions of the statute regarding embezzlement.

3642. Hereafter before a school **district treasurer** shall be allowed to **draw** the state apportionment from the county treasurer he must present a certificate from the county superintendent setting forth that such district has had the legal number of months of school, has made the census report properly, and has made the proper financial report required by law.

SUBDIVISION XII.—SCHOOL HOUSE SITES.

3643. If the **owner** of any real estate on which a school board may desire to locate a school house **refuses** or neglects **to grant** the **site** on his or her premises, or if such owner cannot be found, the county superintendent shall appoint three disinterested persons, none of whom shall be residents of the district, whose duty it shall be, after taking an oath to faithfully discharge the duties imposed on them by this subdivision, to inspect such real estate and assess the damages which such owner shall sustain by the appropriation of his land for the use of said house and school, and make a report to said county superintendent, giving amount of land and damages, with exact location of land, and who shall file and preserve the same in his office. Each person acting as such appraiser shall receive the sum of two dollars per day for his services.

3644. The school board shall pay the **cost of** this **appraisement,** and after paying to the owner of the land the amount of damages assessed may enter upon and occupy the land as long as the district desires to use it for district purposes; but should the same cease to be used for school purposes it will revert back to the owner of the fee simple of the land from which it was taken on the payment by him of the amount originally paid for the land without interest.

3645. **When land** is thus **taken** without the consent of the owner, it shall not be more in amount than one acre, and all orchards, gardens, public parks, shall not be liable to be thus taken, nor shall land be taken within twenty rods of any residence.

3646. The **owner** of land thus taken **may appeal** to the district court, and such appeal shall be taken within 60 days and in the same manner and by the same proceedings as in cases of condemnation by a railroad company for right of way, but the school board shall not be liable for costs of appeal unless the court grant greater damages than the committee of appraisement gave.

3647. When it is desired to locate a school house **site on school land** belonging to the state, the state land commissioner is hereby authorized to sell to the district not less than one nor more than four acres, and give a deed to the district in fee simple in the name of the state as in other cases.

SUBDIVISION XIII.—THE STATE NORMAL SCHOOL.

3648. The state normal school shall be **under** the **direction of** a **board** of education, consisting of seven members, five of whom shall he appointed by the governor for a term of five years each, and the state treasurer and the state superintendent of public instruction shall by virtue of their office be members of said board; *Provided*, That the present appointed members of the board shall continue to hold their several offices till the limit of the time for which they were appointed. All vacancies occurring in the board shall be filled by appointment by the governor.

3649. The **members of** the **board** of education shall annually **elect** a president and a secretary from among their own number, and the state treasurer shall be treasurer of the board by virtue of his office.

3650. It shall be the **duty of** the **secretary** to keep an exact and detailed account of the doings of the board, and on the first day of January of each year he shall transmit to the governor a report of all expenditures made during the preceding years, vouchers for which shall be kept on file in the office of the secretary and open to the inspection of the governor, auditor, and members of the legislature.

3651. The said **board** shall have **power** to appoint a principal, assistant **teachers,** and such other employees as may be required, to fix their compensation and prescribe their duties. They shall have power to remove all persons appointed by them, provided that the affirmative votes of four members of the board shall be necessary to remove a principal or an assistant during the time for which such persons were appointed.

3652. The board of education shall receive **no compensation** for their services, but shall be reimbursed actual expenses incurred in attending upon meetings of the board.

3653. The board shall hold each year two **regular meetings,** the last week of the spring term in June, and the last week of the winter term in December, and such special meetings as may be found necessary.

3654. The board shall adopt all needful **rules** and regulations for the careful preservation of the buildings, furniture, apparatus, grounds, timber, shrubbery, etc., belonging to the school.

3655. **The principal** shall be the chief executive officer of the school, and shall be responsible to the board for the control and management of the same. All teachers and other subordinates in said school shall be under the direction of the principal, subject to the general regulations of the board.

3656. The board in their regulations, and the principal in his supervision and government of the school shall exercise a watchful guardianship over the **morals of** the **pupils,** but no **religious** or sectarian **test** shall be applied in the selection of teachers, and none shall be adopted in the school.

3657. Any student having completed the common school course shall be entitled to a **certificate,** good for two years, in any part of the state; any student completing the higher course of study in a satisfactory manner shall be entitled to a **diploma,** which diploma will entitle the holder to teach in any of the schools of the state without further examination for the space of three years. Any graduate of the higher course who shall after graduation teach two annual terms of school of not less than six months each, or their equivalent, and shall produce a certificate of good moral conduct, and satisfactory discharge of professional duties from the board or boards of directors of the district or districts in which the applicant taught, countersigned by the county superintendent of the proper county or counties, shall be entitled to receive an additional diploma, good for life; *Provided,* That any teacher producing satisfactory proof of three years' successful teaching previous to graduation in the higher course of study may receive, upon graduation, diploma, good for life; *Provided,* That no life diploma shall be in force after its holder shall permit a space of three years to elapse without following some educational pursuit, unless said diploma be endorsed by the acting state superintendent. **Provided,* That each holder of a certificate from the common school course or a diploma from the higher course shall, before he begins to teach, register the same in the office of the county superintendent of the county in which he shall teach; and for such registration he shall pay a fee of one dollar, which shall go into the institute fund of said county.

All after * added 1889, p. 550.

3658. **All funds** appropriated for the use and benefit of the normal school, together with the income arising from the lease and sale of the endowment lands belonging to said school, shall be **under** the direction and **control of** said **board** of education, subject to the provisions herein contained. The treasurer shall pay, out of the proper funds, all drafts for moneys to be expended under the provisions of this subdivision, such orders or drafts to be drawn by the auditor on certificates by the secretary, countersigned by the president of the board. No such certificates shall be given except upon accounts audited and allowed by the board in open meeting.

3659. All the **lands** remaining unsold of the twenty sections heretofore appropriated as an **endowment fund** for the state normal school, and all the endowment fund hitherto derived from the sale of such lands, shall be and the same is hereby confirmed as such endowment, to be forever used for this purpose.

3660. Students when entering the school for the first time, shall pay a **matriculation fee** of five dollars. The moneys thus received shall be paid into the hands of the state treasurer, and shall be held as a **library fund,** and the board of education shall from time to time appropriate the same for the purchase of books for the normal school library.

3661. All moneys received for the use of rooms in the **dormitory** shall be expended by the board in repairs of dormitory and the furniture of the same, whenever such repairs are needed.

3662. The exclusive **purpose of** this **school** is the training and instruction of persons, both male and female, in the arts of teaching and managing schools, and in the principles and practice of the various branches of learning taught in our public schools.

3663. The board shall make such **rules** and regulations for the **admission** of pupils to the school as may seem to be best for the interest of the school and not inconsistent with the purpose for which the school has been established.

STATE UNIVERSITY.

Secs. 3664 to 3685. "An act to **establish** the **university** of Nebraska." 1869, p. 172. In force February 15. (Secs. 5 and 9 repealed 1875, p. 59.)

3664. That there shall be **established** in this state an institution under the name and style of "The University of Nebraska."

For act of location see sec. 3891.

3665. The **object** of such institution shall be to afford to the inhabitants of this state the means of acquiring a thorough knowledge of the various branches of literature, science, and the arts.

3666. The general **government** of the university shall be vested in a board of six regents, elected by the electors of the state at large, according to the provisions of the constitution of 1875. Vacancies occurring in the board between one general election and another may be filled by the governor; *Provided always*, That any person thus appointed to fill a vacancy shall hold his office until the next general election succeeding his appointment, and no longer.

Board formerly consisted of twelve members, not elective. Amended 1877, p. 56. Regents can exercise only delegated powers; may sue and be sued, but cannot maintain an action to recover funds belonging to the university. **5**, 428.

3667. The **board of regents** shall have full **power** to appoint their own presiding officer and secretary. And they shall constitute a body corporate, to be known as "The regents of the university of Nebraska," and as such may sue and be sued, and may make and use a common seal, and alter the same at pleasure. They may acquire real and personal property for the use of the university, and may dispose of the same whenever the university can be advantaged thereby; *Provided*, They shall never dispose of grounds upon which buildings of the university are located, without consent of the legislature.

Rewritten 1877, p. 56. Can only dispose of money as appropriated by the legislature. **17**, 612 (24 N. W., 202.)

3668. The **regents** shall have **power,** and it is hereby made their duty, to enact laws for the government of the university, to elect a chancellor, who shall be the chief educator of the institution, and the prescribed number of professors and tutors, and a steward; to prescribe the duties of all the professors and officers, and to fix their compensation. They shall have power to remove any professor or officer, but only upon the proof of written charges, and after affording to the person complained against an opportunity for defense.

3669. The university may embrace five **departments,** to-wit: *First*—A college of literature, science, and art. *Second*—An industrial college, embracing agriculture, practical science, civil engineering, and the mechanic arts. *Third*—A college of law. *Fourth*—A college of medicine. *Fifth*—A college of the fine arts.

Amended 1877, p. 56.

3670. The regents shall be empowered to establish in these several colleges such **chairs of instruction** as may be proper, and so many of them as the funds of the university may allow. They shall also be authorized to require professors to perform duties in more than one of the several colleges, whenever they shall deem it wise and proper so to do.

Original section specified what chairs should be established. Amended 1877, p. 57.

3671. The governor shall **set apart** two sections of any agricultural college land, or saline land, belonging to the state, and shall notify the state land commissioner of such reservation, for the purpose of a **model farm**, as a part of the college of agriculture; and such land, so set apart, shall not be disposed of for any other purpose.

3672. The several **buildings** of the university shall all be **erected within** a radius of four miles from the state house.

3673. The regents shall, when the number of students in any particular branch shall require, elect one or more **tutors** to give instruction in such branch of study; but such tutors shall not be considered as belonging to the faculty of the college in which they may be employed.

3674. The immediate **government of each college** shall be by its own faculty, which shall consist of the professors therein, but no course of study shall be adopted, or series of text books used, without the approval of the board of regents.

3675. The board of regents shall have exclusive authority to confer **degrees** and grant **diplomas**, but each college may, in its discretion, grant rewards of merit to its own students. No student shall, upon graduation, receive any diploma or degree, unless he shall have been recommended for such honor by the faculty of the college in which he shall have pursued his studies. The regents shall also have power to confer the usual honorary degrees upon other persons than graduates of this university, in recognition of their learning or devotion to literature, science, or art; but no degree shall be conferred in consideration of the payment of money or other valuable thing.

3676. The **fee of admission** to any college in the university shall be five dollars each for all persons, * and the amount arising therefrom, together with all other tuition fees, shall be paid into the hands of the university treasurer, and shall be held as a library fund, and the board of regents shall annually appropriate the same for the purchase of books for the university library.* A reasonable course of study, precedent to admission, shall be prescribed by the board of regents, and no applicant who shall fail to pass an examination in any part of such course shall be admitted; *Provided*, Any person who shall produce a certificate from a county superintendent of common schools, that he has passed honorably through the course of study prescribed in the high school, under the common school laws of the state, may be admitted without further examination.

*** to * inserted 1873. G. S., p. 1053.**

3677. All **persons** residing within this state, and who shall fill the requirements of the preceding section, may be **admitted** to any organized college of the university, and students entering the college of literature, science, and art, or the industrial college, shall not be required to pay any other tuition fee than the matriculation fee during the term of four years. All other students in these colleges, and all who elect to remain under instruction for a longer term than four years, shall be require to pay such fees as the board of regents may determine. Students may be admitted to the colleges of law, medicine, and fine arts upon such terms and be required to pay such tuition and fees as the board of regents may determine. Persons not residents of this state may be admitted to the privileges of the university in any college or department thereof, if otherwise qualified, upon such terms as to the payment of tuition and other fees, in addition to a matriculation fee, as the board of regents may prescribe.

Amended 1891, p. 355.

3678. The regents shall procure all **text books** to be used in the university, and shall furnish them to students at cost. The regents may, upon the proper evidence of the good character of any student, and his or her ambition to acquire an education and inability to provide his or her own means therefor, donate to such student all text books he or she may need, and, by a two-thirds vote, may appropriate money to pay other expenses for such student; *Provided*, Such student will render an immediate equivalent in personal service for such appropriation, or give a sufficient obligation that he or she will reimburse the regents within five years.

3679. **No person** shall, because of age, sex, color, or nationality, be **deprived of** the **privileges** of this institution. Provisions shall be made for the education of females apart from male students, in separate apartments or buildings; *Provided*, That persons of different sexes, of the same proficiency of study, may attend the regular college lectures together.

3680. The regents shall provide a **rule for attendance** upon the agricultural college and civil engineering and scientific courses, by persons whose employments are such as to allow of their pursuit of study only a portion of the year.

3681. The board of **regents** shall, at least ten days prior to the meeting of each regular session of the legislature, transmit to the governor, to accompany his message, a printed **report** of all their doings since their last report, giving in detail all receipts and expenditures of money, and furnishing an estimate for future income and expenses, a catalogue of professors, officers, and students for the year, with such other information and recommendations as will apprise the legislature fully of the conditions and wants of the university.

Amended 1877, p. 57.

3682. The **funds** of the university **shall be two,** to-wit: The endowment fund and the regents' fund. The endowment fund shall be kept by the treasurer in two accounts: *First*—That derived from the proceeds of the sale of lands donated to the state by the United States, "to establish and endow a state university," under the act of congress of April 19, 1864, in one account; and, *Secondly*—That derived from the proceeds of the sales of lands donated to the state by the United States to provide colleges for the benefit of agriculture and the mechanic arts, in an act of congress, approved July 2, 1862, in another account. To the funds received from these two sources there shall be added to the first, two-thirds, and to the second, one-third of the proceeds of all lands, or of all moneys, acquired by donation or bequest, where other objects are not stated. All moneys received in any manner as part of the endowment fund shall be invested as fast as five hundred dollars shall accumulate, in such United States, or guaranteed state stocks, or registered county bonds, as will pay not less than 7 per cent annually; and the principal of such investments shall never be appropriated by the legislature, nor used by the regents, for any purpose whatever. The regents' fund shall consist of the proceeds of the investment of the endowment fund, of the proceeds of the annual rental of the university and agricultural college lands leased, of the matriculation and other fees paid by students, and a tax of three-eighths of one mill on the dollar valuation on the grand assessment roll of the state, which shall be levied in the year of 1877, and annually thereafter. The treasurer shall keep the fund in three accounts, to-wit: The university account, the industrial college account, a general account. The first and second shall be exclusively for the payment of salaries in the various colleges, and the third account shall be for appropriations in the discretion of the regents (except as may be specifically provided for by law) for any purpose directly connected with the university. All moneys accruing to the regents' fund are hereby appropriated to the use of the state university, to be disbursed according to the provisions of law.

Amended 1877, p. 57. See **9**, 470 (4 N. W., 61).

3683. The **treasurer of** the **state** shall be the **custodian** of the principal of the endowment **fund** of the university, and shall, with the advice of the governor and auditor, make the investments thereof as provided in section twenty-one of the act to which this is supplementary. He shall pay over monthly to the treasurer of the university, all moneys of the university derived from interest, state university tax, or other sources, which by the preceding section are made applicable to the regents' fund, and take his receipt therefor. The regents shall, from the moneys carried to the general account of the regents' fund, provide necessary furniture for the university building, and all apparatus and text books, and make an annual appropriation for books for a general library. The treasurer of the university shall pay out no moneys except upon a warrant drawn upon the secretary and countersigned by the president of the board of regents, and all warrants so drawn shall distinctly specify the object for which payment is thereby made, and the date of the resolution or order of the board of regents authorizing the draft; and the secretary shall keep a full record of all warrants drawn on the treasury of the university, and shall lay before every meeting of the board of regents a detailed statement of all such warrants drawn subsequent to the preceding session of the board; *Provided,* No moneys belonging to the regents' fund shall be applied in the construction of the university building; *Provided further,* That no money arising from the endowment fund shall be diverted from the purpose for which it was intended by act of congress granting the same.

Rewritten 1870, p. 13.

3684. The **regents** shall **meet** at least twice in each year at the university building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties.

Amended 1887, p. 58.

3685. No superstructural work upon any **building** for the university shall be commenced, until the designs and plans therefor shall have been submitted to the board of regents by the commissioners for public buildings, and the architect thereof shall be required, before allowing any such superstructure to be erected, to make such alterations in the plans and specifications as may be directed by a majority of the regents.

Secs. 3686 to 3688. "An act **providing for** the more efficient **government** of the state university and for the disposition of funds belonging thereto." 1875, p. 154. In force February 23. (Sec. 1, abrogated by constitution, and sec. 5, being temporary, are omitted.)

3686. The **regents** shall have **power** to enact laws for the government of the university; to elect a chancellor, and the prescribed number of professors and tutors, and a steward; to prescribe the duties of all the professors and officers, and to fix the compensation. They shall have power to remove the chancellor, and any professor or tutor, when the interests of the university shall require it.

3687. The office of **treasurer of** the **university** is hereby **abolished,** and the state treasurer is made custodian of the funds, to whom the present treasurer of the university shall turn over, within sixty days, all moneys, securities, books, and papers pertaining to that office.

3688. **Disbursements** from the university fund shall be made by the state treasurer, upon warrants drawn by the auditor, who shall issue warrants upon certificates issued by the board of regents, signed by the secretary and president. All money accruing to the university fund is hereby appropriated to the use of the state university.

Secs. 3689 and 3690. "An act to appropriate the **matriculation and diploma fees,** constituting '**a library fund**' for the university of Nebraska, for the use and support of the university." 1891, p. 449. In force August 1 (see preface). (Act of 1881, p. 392, being superseded by this, is omitted.)

3689. That all moneys which may be received by the state treasurer from the

31st day of March, 1891, to and including the 31st day of March, 1893, on account of **matriculation** and diploma fees collected from the students of the university of Nebraska, and which by law constitutes a special "library fund" for said university, be and the same are hereby **appropriated** for the purchase of books for the library of said university.

3690. That for the **disbursement** of the moneys hereby appropriated the board of regents of the university of Nebraska shall issue certificates signed by its president and secretary in the manner provided by an act of the legislature of the state of Nebraska, approved February 23, 1875, and upon the presentation of such certificates the auditor of public accounts is hereby authorized and required to draw and issue his warrant upon the state treasurer for the amount specified in such certificates, and in favor of the party therein named; *Provided*, That no warrant shall issue under this act unless there are funds in the hands of the treasurer to pay the same.

Secs. 3691. "An act on behalf of the state of Nebraska, to accept, ratify, and assent to the provisions, terms, grants, and conditions of an act passed at the second session of the forty-ninth congress of the United States, entitled 'An act to establish agricultural **experiment stations** in connection with the colleges established in the several states under the provisions of an act approved July 2d, 1862, and of the acts supplementary thereto,' approved March 2d, 1887." 1887, p. 635. In force July 1.

3691. Whereas, the forty-ninth congress of the United States, at its second session, passed an act commonly known as the "Hatch bill," and entitled as follows: "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2d, 1862, and of the acts supplementary thereto;" and Whereas, said **act of congress** provides, among other things, that it shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of foods for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective states or territories; and Whereas, the said act of congress declares that a leading object of the establishment of the said experimental stations is to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and applications of agricultural science, and prescribes methods to this end, and also prescribes conditions and relations which are to be maintained between the United States and the institutions of learning established in the several states, and which are organized under the land grant of 1862, and provides further that the grants of money authorized by the said act are made subject to the legislative assent of the several states and territories to the purposes of said grants; and Whereas, the university of Nebraska, in the state of Nebraska, has established and maintained a college or department of agriculture known and designated as the "industrial college," in accordance with the provisions of said land grant of 1862; and Whereas, the said act of the forty-ninth congress appropriates to this state the sum of fifteen thousand dollars ($15,000) per annum for the purposes and upon the conditions therein set forth, the same to be paid to the treasurer or other officer duly appointed by the governing board of said college to receive the same; and Whereas, the governor of this state has presented to the legislature his special message with recommendations relating to the subject-matter hereof: Therefore,

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. That full and complete acceptance, ratification, and assent is hereby made and given by the state of Nebraska to all of the provisions, terms, grants, and conditions and purposes of the grants made and prescribed by the said act of the congress of the United States, entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto."

SEC. 2. That a duly authenticated copy of this act shall be prepared and forwarded by the secretary of state to the secretary of the treasury of the United States.

Sec. 3692. "An act assenting, on behalf of the state of Nebraska, to the grants, purposes, terms, and conditions of an act of the congress of the United States, approved August 30, 1890, entitled 'An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an act of congress approved July 2, 1862,' and to carry into effect the said act of congress in the state of Nebraska." 1891, p. 356. In force March 19.

3692. Whereas, by an act of the congress of the United States, approved August 30, 1890, there is appropriated to this state, for the use and benefit and the more complete endowment and support of the educational institution therein, described, the sum of fifteen thousand dollars ($15,000) for the year ending June 30, 1890, sixteen thousand dollars ($16,000) for the year ending June 30, 1891, and so on until the sum of twenty-five thousand dollars ($25,000) is reached, at which last named amount said congressional appropriation is thereafter to remain fixed annually; and Whereas, it is provided by said act of congress that the money thereby appropriated shall be applied to the more complete endowment and maintenance, in the several states and territories, of colleges for the benefit of agriculture and the mechanic arts, which now are or may be hereafter established in accordance with an act of congress approved July 2, 1862 (wherein no distinction on account of race or color is made in the admission of students), and that said money shall "be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction;" and Whereas, it is provided by said act of congress that "no portion of said moneys shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings," and that if said moneys be diminished or lost they shall be replaced by the state or territory to which they belong; and that the grants of money authorized by said act of congress are made subject to the legislative assent of the several states and territories to the purpose of said grants (or upon the assent of the governor thereof during the recess of the legislature); and Whereas, it is provided by said act of congress that the moneys thereby appropriated shall be paid from time to time to the state or territorial treasurer, or other officer who may be designated by law to receive the same, who shall, upon the order of the trustees of the college described in said act, immediately pay the same over to the treasurer of the educational institution entitled to receive the same; and Whereas, the college of agriculture and the mechanic arts (now designated by law as the industrial college) of the university of Nebraska, is the college now existing in this state, organized under the provisions of the act of congress of 1862, and thereby entitled to receive the moneys appropriated by the said act of congress of August 30, 1890; and Whereas, the treasurer of the state of Nebraska has received the sum of fifteen thousand dollars, the first installment of money appropriated under the said act of congress last named, in pursuance of the assent of the governor; Therefore,

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. That full and complete **acceptance**, ratification, and assent is hereby made and given by the state of Nebraska to all and every one of the grants, purposes, terms, and conditions set forth in an act of the congress of the United States, approved August 30, 1890, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July 2, 1862."

SEC. 2. That all moneys that now are or may hereafter be received by the state treasurer or other state officer, in pursuance and by virtue of the said act of congress, are hereby specifically appropriated and set apart solely for the more complete endowment, support, and maintenance of the college for the benefit of agriculture and the mechanic arts now existing in this state under the provisions of an act of congress approved July 2, 1862, and designated by law as the industrial college of the university of Nebraska; and all of said moneys shall be immediately paid over by the treasurer to the authorities of said college, hereinafter designated, without further warrant or authority than is contained herein.

SEC. 3. That for all intents and purposes of this act and of the said act of congress, and to carry the latter into full effect in this state, the board of regents of the university of Nebraska shall be "the trustees of the college" described in the said act of congress, approved August 30, 1890, and referred to in the title of this act, and such fiscal officer as the said board of regents may name and designate and appoint to receive and disburse said moneys under their orders, who shall, for all intents and purposes of this act, and of the said act of congress last mentioned, be the "treasurer" of the said college, and to this officer the state treasurer shall immediately pay over, upon the order of the said board of regents, all moneys which are now in his hands, or which may be hereafter received by virtue of the said act of congress for the use and benefit of said college. The said board of regents are hereby authorized and empowered to make such orders and regulations for the security, control, management, and disbursement of the said moneys as to them shall seem wise and proper and for the best interests of the college.

Secs. 3693 to 3698. "An act to provide for the organization of the **students** of the university of Nebraska into a **battalion** and to provide for the commissioning of officers in said organization." 1887, p. 638. In force March 30.

3693. That **all male students** now attending or who may hereafter attend the university of Nebraska, and who are required, by the rules and regulations that are or may be established by the board of regents of the university for the government of the military department, to attend upon the studies or other exercises of said department, shall be organized, under the form of the **battalion,** into a body which shall be known and styled the "university cadets."

3694. The **officers of** the cadet **battalion** for duty at and while in attendance upon the university, shall be appointed by the commandant in charge of the department, by detail of the general government, and they shall be directly responsible to him in the discharge of all their duties as such officers.

3695. All **persons** holding appointments under the commandant of the military department of the university as officers of the cadet battalion, at the time of their graduation from the university, between and including the ranks of second lieutenant and colonel, shall be certified with their proper rank, to the governor of the state, by the military officer in charge and the chancellor of the university, and thereupon the governor is authorized and directed to issue his commission in due form to all such persons so certified to him. All persons so **commissioned** by the governor shall hold their commissions as retired officers of the university cadets, liable to be called into service by the governor in case of invasion, insurrection, or rebellion, in the same manner as the state militia.

3696. The adjutant general of the state shall issue such **arms,** munitions, accoutrements, tents, and **equipments,** for the temporary or permanent use of the university cadets, as the board of regents may require and the governor approve. All property so issued, and not intended merely for temporary use, or for consumption or expenditure, shall be receipted for to the adjutant general by the chancellor or other proper officer of the university, and the same shall be subject to return upon demand of the adjutant general, whenever the necessities of the state require.

3697. The **selection of officers** of the university cadet battalion, for duty during the attendance upon the institution, shall be made upon a basis involving both scholarship and capacity and fitness for command, and according to such rules and regulations as the board of regents may prescribe. The board of regents shall make all needful rules and regulations to carry into effect the purposes of this act, consistent with the constitution and laws of this state.

3698. The **commandant** or officer in charge of the military department of the university shall make quarterly **reports** to the adjutant general of the state, showing the number, organization, discipline, and equipment of the university cadets.

SUBDIVISION XIV.—SCHOOLS IN CITIES.

3699. That each incorporated **city** in the state of Nebraska, or those hereafter incorporated as such, having a population of more than fifteen hundred inhabitants, including such adjacent territory as now is or hereafter may be attached for school purposes, shall constitute one **school district,** and be known by the name of "the school district of (name of city), in the county of (name of county), in the state of Nebraska," and as such, in that name, shall be a **body corporate,** and possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold, and sell such personal and real estate, and control such obligations as are authorized by law, and the title to all school buildings or other property, real or personal, owned by any school district within the corporate limits of any city, shall, upon the organization of a district under the provisions of this subdivision, vest immedateiy in the new district; and the board of education by this subdivision provided, shall have exclusive control of the same for all purposes herein contemplated; *Provided,* That any territory not included within the corporate limits of any city, and containing territory or a number of children sufficient to constitute a school district under the provisions of this chapter, may, by petition signed by at least a majority of the legal voters of such territory, and a majority of the board of education of such city, be by the county superintendent erected into a separate district under the conditions imposed by this chapter; *Provided further,* That in case any city above described shall embrace more than one entire school district, and the fractional part of another school district shall extend within the corporate limits of said city, the fractional part so embraced within said corporate limits shall be exempt from the provisions of this subdivision, until such time as a majority of the legal voters of said fractional part shall petition the board of education of said city to be included in said district, and upon the receipt of such petition by said board, the fractional part shall be included within the said district, for all purposes of this subdivision.

Amended 1883, p. 296. A city of the second class having a population of more than 2,000 (now 1,500) inhabitants, including such adjacent territory as may be attached for school purposes, may be formed into one school district, and the boundaries of the school district are not necessarily limited to the city boundaries. **10,** 12 (4 N. W., 379). New district becomes liable for debt of old, and tax properly levied on all of new district to pay the same. **15,** 4 (16 N. W., 902).

3700. That all **schools** organized **within** the limits of said **cities** shall be under the direction and **control** of the boards of education authorized by this subdivision. Such schools may be free to all children between the ages of five and twenty-one years, whose parents or guardians reside within the limits of said district.

3701. That the **boards of education** contemplated by this subdivision shall consist of six **members,** who shall be elected upon a general ticket from among the legal voters who are taxpayers, at the time for holding the general city election in each year. At the first election in cities organized under this act two members shall be elected for the term of three years, two for two years, and two for one year, and annually thereafter two members shall be elected for three years and until their successors are elected and installed in office; *Provided,* That in cities of the first class the board of education shall consist of nine members, who shall be qualified electors of said city, and who shall be actual taxpayers, who shall be elected at the times and hold their offices for the terms hereinafter prescribed, to-wit: At the first annual city election held after organizing under this act, three members shall be elected for the term of three years, three for two years, and three for one year; and annually thereafter their successors shall be chosen for the term of three years, and all members so elected shall serve until their successors are duly elected and qualified. In cities now organized under this act, no vacancy shall be created because of this amendment. It shall be the duty of the mayor of any city now organized or hereafter organized under the provisions of this subdivision, to give public notice to the electors thereof of the number of persons who shall be chosen by them as members of a board of education for the school district of (name the city) at the ensuing annual election for city officers.

Amended 1883, p. 297; 1885, p. 327.

3702. That the ballots for the **election of members** of the board of education, for authorizing the issuance of bonds, or the purchase of sites and erection of buildings, shall in all cases be deposited in boxes especially prepared for that purpose, and be received and returns made by the regular election board; but the returns for the election of members shall be canvassed in the same manner as provided for in the case of city officers; the returns for the issuance of bonds, purchase of sites, and erection of buildings, shall be made to and canvassed by the board of education.

3703. That all persons elected as **members** of the boards of education shall, on or before the first Monday of the month following their election, take and subscribe the usual **oath of office.** In case any person elected shall fail so to do, his election shall be void, and the **vacancy** thereby occasioned shall be filled by the board, as hereinafter provided.

3704. That the **regular meetings** of the boards of education shall be held upon the first Monday of each month; but special meetings may be held from time to time, as circumstances may demand, and all meetings of the board shall be open to the public, unless otherwise specially ordered.

3705. That the boards of education shall have power to select their own **offi-**

cers, make their own rules and regulations, subject to the provisions of this subdivision; but **no** member of the board, excepting the secretary, shall receive or accept any **compensation** for services performed in discharging the duties of his office.

3706. That the members of each board of education, **at** their **first** regular **meeting** succeeding their election each year, shall **elect** a president, vice-president, and secretary from their number, who shall serve for the term of one year, or until their successors are elected; they may also elect at any regular meeting one superintendent of public instruction, with such salary as the board may deem just, and they may enter into contract with him, in accordance with their discretion, for a term of years not to exceed three years. The election of the officers of the board, of the superintendent and teachers, and for filling vacancies in the board, shall be by ballot, and no person shall be declared elected except he receive the vote of a majority of all the members of the board.

Amended 1883, p. 298.

3707. That it shall be the **duty of** the **president** to preside at all meetings of the board, to appoint all committees whose appointment is not otherwise provided for, and to sign all warrants ordered by the board of education to be drawn upon the city treasurer for school moneys.

3708. That it shall be the duty of the **vice president** to perform all the duties of the president, in case of his absence or disability.

3709. That it shall be the **duty of** the **secretary** to be present at all meetings of the board, to keep an accurate journal of its proceedings, to take charge of its books and documents, to countersign all warrants for school moneys drawn upon the city treasurer by order of the board, to apply for and receive school funds from the county treasurer or other person to whom such funds are payable by law, and deposit the same with the treasurer of the board, and to perform all such other clerical duties as the board may require; and for his services he shall receive such salary as the board may deem adequate.

3710. That before entering upon the discharge of his duties the **secretary** of the board shall give **bonds** in a sum of not less than one thousand dollars, to be determined by the board, with good and sufficient sureties, and shall take and subscribe an **oath** or affirmation, before a proper officer, that he will support the constitution of the state of Nebraska, and faithfully perform the duties of his office.

Amended 1883, p. 299.

3711. That the city treasurer of such city shall be *ex-officio* **treasurer** of the board of education; he shall attend all meetings of the board when required to do so; shall prepare and submit in writing, a monthly report of the state of its finances, and shall pay school moneys only upon a warrant, signed by the president, or in his absence by the vice president, and countersigned by the secretary. He shall give bond payable to the county in twice the sum that may be in his possession at any one time of moneys belonging to or under the control of the board of education.

Amended 1883, p. 299.

3712. That within ten days after the permanent organization of a board of education as provided for in this subdivision, it shall be the duty of all **officers** of school districts within the limits of cities aforesaid, to **deliver** to the officers of the board all property, **funds,** and papers entrusted to their care for the use of the public schools in such cities, and all funds thus received shall be immediately paid to the treasurer of the board and be by him placed to the credit of the school district provided by this subdivision.

3713. That the boards of education shall have power to fill any **vacancies** which may occur in their body from among the legal voters who are taxpayers; *Provided*, That any vacancy occurring more than ten days previous to the annual city election, and leaving an unexpired term of more than one year, shall be filled at the first city election thereafter, and the ballots and returns shall be designated as follows: "to fill unexpired term."

Amended 1883, p. 299.

3714. That a majority of all the members of each board of education shall constitute a **quorum**, but a less number in attendance at any regular meeting shall have, and a quorum at any special meeting may have, power to compel the attendance of absent members, in such manner and under such penalties as such board shall see fit to prescribe, and the absence of any member from four consecutive regular meetings of the board, unless on account of sickness or consent of the board, removal from the district, or resignation accepted by the board ,shall vacate his position on the board, and such vacancy shall be filled in accordance with the provisions of this subdivision.

3715. That all **accounts** shall be **audited** by the secretary, approved by a committee, to be styled the committee on claims, and no expenditure greater than two hundred dollars shall be voted by the board, except in accordance with the provisions of a written contract; nor shall any money be appropriated out of the school fund except on a recorded affirmative vote of a majority of all the members of the board, *and said accounts and the records of said board in cities of the first class shall at all times be subject to the inspection and examination of the auditor of such city, whose duty it shall be each month to examine said records and check said accounts, and from time to time, as may be required by ordinance or resolution of the city council, report to said council the nature and state of said accounts, and any facts that may be required concerning said records.

All after * added 1885, p. 330.

3716. That the boards of education shall annually cause to be taken an **enumeration** of all persons between the ages of five and twenty-one years, residing in the district, who shall report the same, together with such other information as required by sections one and seventeen of subdivision IV of this chapter [3575], to the county superintendent of public instruction at the time specified by law for like returns from other districts.

Amended 1883, p. 300.

3717. That all persons making applications to boards of education as teachers in graded and high schools therein, shall be required to produce a legal **certificate** given by some authority authorized to grant teachers' certificates or from an **examining committee** appointed by the board. And for such purpose the board of education is authorized to appoint three competent persons, at such times as may be deemed expedient, who shall be styled "the examining committee of the board of education," and whose duty it shall be to examine all persons who may apply to them as teachers, and teachers receiving such certificates setting forth that such person is competent to teach in the public schools of the city, and is a person of good moral character, shall be entitled to all the benefits arising from a certificate issued to any teacher under the laws of this state. Any certificate granted by such committee may be revoked by the board of education, for any reason which would have justified the withholding thereof when the same was granted, or for gross negligence of duty, incompetency, or immorality.

3718. It shall be unlawful for any member of the board of education to have any pecuniary **interest**, either directly or indirectly, **in** any **contract** for the erection of school houses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools.

3719. **No school property** of any kind belonging to any school district shall be **sold** by the board of education, except at a regular meeting of the same, and not then without an affirmative recorded vote of at least two-thirds of all the members of the board.

3720. Each of the school districts provided for in section one of this subdivision shall have the power, and it shall be the duty of the board of education, to provide for the **payment of debts** created by school districts or other school organizations superseded by the districts herein provided for, when such debts shall have been incurred in the erection of school houses, or for other school purposes; if any portion of such debts shall be in the form of **bonds,** if issued for a valuable consideration and in accordance with law, the validity of which has not been called in question, or if called in question have been declared by courts of last resort to be valid, the holder or holders thereof, on surrendering the same to said board, shall have the right to demand, and it shall be the duty of said board, in the name of the district created by this subdivision, to cause to be issued other bonds of like amount, of the same tenor and effect as to payment of principal and interest as the bonds surrendered. This provision shall also apply to cases where only a part of a district shall be embraced within the district created by this subdivision, whenever said fractional part shall petition and become a part of said district, as provided for in section one of this subdivision; *Provided,* The latter shall assume and pay only such proportion of the debt of the divided district as the assessed valuation of the part taken therefrom shall bear to the assessed valuation of the part remaining. In case of a division of one or more school districts for the purpose of forming one school district within the limit of a city of the first class, it shall be the duty of the county superintendent of public instruction, the president of the board of education, and the director of the school district, to appraise and adjust all claims or assets in such a manner that each district shall bear its proportion of the indebtedness, as heretofore provided, and have its proportion of the assets of said district.

3721. That the board of education shall annually, during the month of June, **report** to the county commissioners an estimate of the amount of funds required for the support of the schools during the fiscal year next ensuing, the amount of funds required for the purchase of school sites, the erection of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness; and the county commissioners are hereby authorized and required to levy and collect the necessary amounts the same as other taxes; a duplicate of said certificate shall be filed by the board with the city council; *Provided,* That in cities of the first class said estimate shall be made to the city council, and the city council is hereby authorized, and if approved by city council, required to levy and collect the necessary amount the same as other taxes; *Provided further,* That in cities of the first class, in case the purchase of school sites and erection of buildings shall require an expenditure exceeding five thousand dollars for any one calendar year, the question shall be submitted to a vote of the electors of the district at the time and place of any city, county, or state election. The board of education shall, previous to such election, designate in at least one daily paper published in the district where such election shall be held, the locality of the site or sites required, and the cost of the building to be erected thereon.

Amended 1885, p. 329.

3722. That the aggregate **school tax** shall in no one year exceed **two per cent** upon all the taxable property of the district.

Changed from one per cent, 1883, p. 300.

3723. That all **taxes** collected for the benefit of the public schools shall be **paid in money,** and shall be subject to the order of the board of education.

3724. That the **board** of education is hereby authorized and required to **provide,** before the same shall become due, for the interest on all bonds issued by the district; they shall also, immediately after the expiration of one-half of the time for which said bonds are issued, proceed to set apart, each year, for a **sinking fund,** a requisite amount or proportion sufficient to pay the principal of said bonds when they shall become due. All moneys set apart for said sinking fund shall be invested: *First*—In the purchase and redemption of bonds of the school district, which bonds shall be purchased in open market, in such manner as the board of education shall prescribe. *Second*—In bonds of the county in which the city is situated. *Third*—In bonds of the state of Nebraska. *Fourth*—In U. S. bonds. **Fifth*—In bonds of the city.

All after * added 1883, p. 300.

3725. That if it shall be deemed advisable by the **board** of education to **purchase bonds** issued under the provisions of this chapter before maturity, the treasurer shall sell to the highest bidder, in open market, and in a manner prescribed by the board, such bonds or securities as shall belong to the school funds, and the proceeds thereof shall apply to the purchase of bonds herein provided for.

3726. That **all moneys** arising from any source whatever, which under any prior act or acts of the legislature of this state, are payable to any school fund of any city of the state, or any moneys which are required to be set apart by the treasurer of any such city for the support and maintenance of any school heretofore organized therein, under any general or special law, shall, on and after the passage of this subdivision, be **payable to** the **treasurer** of the board of education, and shall be used only for the purpose specified in this subdivision.

Secs. 3727 to 3755. "An act relative to public **schools in metropolitan cities,** and to repeal an act approved March 31, 1887, entitled 'An act relative to public schools in metropolitan cities,' and all acts amendatory thereof." 1891, p. 317. In force April 7.

3727. That **each** incorporated metropolitan **city** in the state of Nebraska, or those hereinafter incorporated as such, shall constitute **one (1) school district** and be known by the name of the school district of (name of city), in the county of (name of county), in the state of Nebraska, and as such in that name, shall be a **body corporate,** and possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold, and sell such personal and real estate, and control such obligations as are authorized by law; and the title to all school buildings, or other property, real or personal, owned by any school district within the corporate limits of metropolitan cities shall, upon the organization of a district under the provisions of this act, vest immediately in the new district, and the board of education, by this act provided, shall have exclusive control of the same for all purposes in this act contemplated.

3728. That **all schools** erected or organized within the limits of said metropolitan cities shall be **under** the direction and **control of** the **boards of education** authorized by this act. Such schools shall be free to all children between the ages of five (5) and twenty-one (21) years, whose parents or guardians reside within the limits of said district.

3729. That **all property** within the corporate limits of metropolitan cities, except such property as now is or may hereafter be exempt by law, shall be **subject to taxation** for all the school purposes contemplated in this act.

3730. That the **affairs** of the school district hereby created shall be **conducted** exclusively **by boards** of education, except as otherwise provided by this act.

3731. That the board of education of metropolitan cities shall consist of **fifteen** (15) **members,** who shall be qualified electors of said city, and who shall be actual taxpayers, who shall be elected at the times and hold their offices for the terms hereinafter provided. On the first Tuesday after the first Monday in November of each year, and annually thereafter, there shall be elected five (5) members at large to serve for three (3) years from and including the first Monday of January following their election, or until their successors are elected and qualified. All persons elected as members of boards of education shall, before the first Monday in January following their election, take and subscribe to the usual oath of office. In case any person so elected shall fail so to do, his or her election shall be void, and the vacancy thereby occasioned shall be filled by the board as hereinafter provided. No vacancy shall, by the provisions of this act, be created in the membership of any board of education elected under the provisions of an act of the legislature of the state of Nebraska entitled "An act relative to public schools in metropolitan cities," approved March 31, 1887, but such members shall serve out the terms for which they were elected.

3732. That the **regular meetings** of the boards of education shall be held on the first and third Monday of each month, but special meetings may be held from time to time as circumstances may demand, at the call of the president of the board, or on petition of a majority of the members thereof; and all meetings of the board shall be open to the public, unless otherwise specially ordered.

3733. That the **boards** of education shall have power to select their own **officers,** and make their **rules** and regulations, subject to the provisions of this act. The board of education herein provided for *any committee of the members thereof shall have power to compel the attendance of **witnesses** for the investigation of matters that may come before them, and the presiding officer of the board of education, or the chairman of such committee for the time being, may administer the requisite oaths, and such board, or committee thereof, shall have the same authority to compel the giving of testimony as is confirmed* on courts of justice.

3734. That the **members** of each board of education, at their regular meeting in January succeeding their election each year, shall **elect** a **president** and vice president from their own members, who shall serve from the term of one (1) year, or until their successors are elected and qualified; they may also elect at any regular meeting in July, one (1) superintendent of public instruction, with such salary as the board may deem just, and they may enter into contract with him in accordance with their discretion, for a term of years not to exceed three (3) years. The election of the officers of the board, superintendent, secretary, teachers, and janitors shall be by ballot, and no person shall be declared elected except he receive a vote of a majority of all the members of the board. They shall annually elect a **secretary** at such salary as the board may deem just. Said secretary shall not be a member of the board of education. They shall also have power to appoint a superintendent of school buildings, whose respective duty, power, salary, and term of office shall be regulated and determined by the board of education, and to employ, under the superintendent of school buildings, necessary workmen, and provide necessary materials for repairing, altering, and enlarging school or other buildings. The superintendent of buildings shall devote his entire time to the discharge of the duties of his position.

3735. That it shall be the **duty of** the **president** to preside at all meetings of the board, to appoint all committees whose appointment is not otherwise provided for, and to sign all warrants ordered by the board of education to be drawn upon the city treasurer for school moneys.

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* So in original.

3736. That it shall be the duty of the **vice president** to perform all the duties of the president in case of his absence or disability.

3737. That it shall be the **duty of** the **secretary** to be present at all meetings of the board, to keep an accurate journal of the proceedings, to take charge of its books and documents, to countersign all warrants for school moneys drawn upon the city treasurer by order of the board; to apply for and receive school funds from the county treasurer or other persons to whom such funds are payable by law, and deposit the same with the treasurer of the board, and to perform such duties as the board may require. That before entering into the discharge of his duties the secretary of the board shall give **bonds** in the sum of not less than ten thousand dollars ($10,000), with good and sufficient sureties, and shall take and subscribe an oath of affirmation before a proper officer that he will support the constitution of the state of Nebraska, and faithfully perform the duties of his office.

3738. That the city **treasurer** of such city shall be *ex-officio* treasurer of the board of education. He shall attend all meetings of the board when required to do so, shall prepare and submit in writing a monthly **report** of the state of its finances, and shall pay school moneys only upon a warrant signed by the president, or, in his absence, by the vice president, and countersigned by the secretary. He shall give bond, payable to the board of education, in twice the sum that may be in his possession at any one time of moneys belonging to or under the control of the board of education.

3739. That the boards of education shall have power to fill any **vacancy** which may occur in their body, provided that any vacancy occurring more than ten days previous to the annual school election and leaving an unexpired term for more than one year, shall be filled at the first school election thereafter, and the ballots and returns shall be designated as follows: "To fill unexpired term."

3740. That a majority of all the members of each board of education shall constitute a **quorum**, but a less number in attendance at any regular meeting shall have, and a quorum at any special meeting may have, power to compel the attendance of absent members in such manner and under such penalties as each board shall see fit to prescribe; and the absence of any member from four consecutive regular meetings of the board, unless on account of sickness or by consent of the board, shall vacate his position on the board, which facts shall be passed upon by the board of education, and spread upon their records.

3741. That all **accounts** shall be **audited** by the secretary, approved by a committee to be styled the committee on claims, and no expenditure greater than two hundred dollars ($200) shall be voted by the board except in accordance with the provisions of a written contract; nor shall any money be appropriated out of the school fund except on a recorded affirmative vote of a majority of all the members of the board, and said account and the records of said board in all metropolitan cities shall at all times be subject to the inspection and examination of the comptroller of such city, whose duty it shall be each month to examine said records and check said accounts, and from time to time, as may be required by ordinance or resolution of the city council, report to said council the nature and state of said accounts, and any facts that may be required concerning said records.

3742. That the boards of education shall annually cause to be taken an **enumeration** of all persons between the ages of five and twenty-one years, residing in the district, and shall report the same, together with such other information as required by sections twelve and seventeen of subdivision four of the general school laws of Nebraska [3570 and 3575], to the county superintendent of public instruction, at the time specified by law for like returns in other districts.

3743. That all persons making applications to boards of education as **teachers** in graded and high schools therein, shall be required to produce a legal **certificate** given by some authority authorized to grant teachers' certificates, or from an **examining committee** appointed by the board. And for such purpose the board of education is authorized to appoint three competent persons at such time as may be deemed expedient, who shall be styled the examining committee of the board of education, and whose duty it shall be to examine all persons who may apply to them as teachers, and teachers receiving such certificates setting forth that such person is competent to teach in the public schools of the city and is a person of good moral character, shall be entitled to all the benefits arising from a certificate issued to any teacher under the laws of this state. Any certificate granted by such committee may be revoked by the board of education for any reason which would have justified the withholding thereof when the same was granted, or for gross negligence of duty, incompetency, or immorality.

3744. That it shall be unlawful for any **member** of the board of education to have any pecuniary **interest,** either directly or indirectly, **in** any **contract** for the erection of school houses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools.

3745. That **no school property** of any kind shall be **sold** by the board of education except at a regular meeting of the same, and not then without an affirmative recorded vote of at least two-thirds of the members of the board.

3746. That each of the school districts provided for in section one of this act shall have the power, and it shall be the duty of the **board** of education to **provide for** the payment of **debts** created by school districts or other school organizations, superseded by the districts herein provided for, when such debts shall have been incurred in the erection of school houses or for other school purposes, if any portion of such debt shall be in the form of bonds, if issued for a valuable consideration, the holder or holders thereof, on surrendering the same to the said board shall have the right to demand, and it shall be the duty of said board, in the name of the district created by this act, to cause to be issued other bonds of like amount of tenor and effect as to payment of principal and interest as the bonds surrendered. This provision shall also apply to cases where only a part of a district embraced within the district created by this act, whenever said fractional part shall become a part of said district, as provided for in section one of this act, provided the latter assume and pay only such proportion of the debt of the divided district as the assessed valuation of the part taken therefrom shall bear to the assessed valuation of the part remaining. In case of a **division of** one or more school **districts** within the limits of a metropolitan city, it shall be the duty of the county superintendent of public instruction, the president of the board of education, and the directors of the school district, to appraise and adjust all claims or assets in such manner that each district shall bear its proportion of the indebtedness, as heretofore provided, and have its proportion of said assets of said district.

3747. That the board of education shall, **annually,** during the month of January, **report** to the city council an **estimate** of the amounts of funds required for the support of the schools, for the purchase of school sites, the erection and furnishing of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness, and the city council is hereby authorized and required to levy and collect said amount the same as other taxes; *Provided, however,* That in case the purchase of school sites and the erection of buildings shall require an expenditure exceeding twenty-five thousand dollars ($25,000) for any one calendar year, the question shall be submitted to a vote of the electors of the district.

3748. That the **aggregate school tax** shall in no one year exceed two per cent upon all the taxable property of the district.

3749. That all **taxes** collected for the benefit of the public schools shall be **paid in money,** and shall be subject to the order of the board of education.

3750. That the **board** of education **may borrow** money upon the bonds, which they are hereby authorized and empowered to issue, bearing a rate of interest not exceeding six (6) per centum per annum, payable annually or semi-annually, at such place as may be mentioned upon the face of such bonds; which loan shall be paid and reimbursed in a period not exceeding thirty (30) years from the date of said bonds; *Provided*, That no bonds shall be issued nor question of issue be submitted to the electors without the consent of two-thirds (⅔) the members of the board of education, and be offered in open market and sold to the highest bidder for not less than par value on each dollar; *And provided further*, That no bonds shall be issued by the board of education without first submitting the proposition of issuing said bonds, at an election called for that purpose, or at any regular election, notice whereof shall be given for at least ten (10) days in one or more daily papers published within the district, to the qualified voters of the district, and if a majority of all the ballots cast upon said bond proposition at such an election shall be for issuing bonds, said board may issue bonds in such an amount as shall be named in their election notice.

Proposition may be submitted at any regular city or state election. Not adopted by receiving 4,930 votes as against 2,992, where, at the same election, 12,337 votes were cast for mayor. Need not contain a provision for levying a tax to pay interest. **29**, 467 (45 N. W., 794).

3751. That in case the electors shall sanction the issuing of said **bonds,** in manner herein provided for, then the said board of education may cause to be **prepared** and issue the same under the provisions of this act, and the said bonds shall express on their face that they are issued in pursuance of this act, and shall be signed by the president and secretary of the board of education, shall specify the rate of interest, the time when the principal and interest shall be paid, the place of such payment, and each bond when so issued shall not be for a less sum than fifty dollars ($50).

3752. That the board of education is hereby authorized and required to provide, before the same shall become due, for the **interest on** all **bonds** issued by the district; they shall also immediately after the expiration of one-half of the time for which said bonds are issued, proceed to set apart each year, for a sinking fund, a requisite amount or proportion sufficient to pay the principal of said bonds when they shall become due. All moneys set apart for said sinking fund shall be invested: (1) in the purchase of and redemption of bonds of the school districts, which bonds shall be purchased in open market, in such manner as the board of education shall prescribe; (2) in bonds of the city constituting the school district; (3) in bonds of the county wherein such district is situated; (4) in bonds of the state of Nebraska; (5) in United States bonds.

3753. That if it shall be deemed advisable by the board of education to **purchase bonds** issued under the provisions of this act, before maturity, the treasurer shall sell to the highest bidder in open market, and in a manner prescribed by the board, such bonds or securities as shall belong to the school funds, and the proceeds thereof shall apply to purchase of bonds herein provided for.

3754. That all **moneys** arising from any source whatever, which, under any prior act or acts of the legislature of this state, are payable to the school fund of any city of the first class which may become a metropolitan city, or any moneys which are required to be set apart by the treasurer of any such city for the support and maintenance of any school heretofore organized herein under any general law, shall, on and after the passage of this act, be **payable to** the **treasurer** of the board of education, and shall be used only for the purposes specified in this act.

3755. All **elections** provided for in this act shall be held in manner following: (1.) The president of the board shall issue his proclamation to the qualified voters of the school district, said proclamation to be published for at least ten (10) days prior to the election in at least one (1) daily paper of general circulation in said school district, setting forth the time when and place or places where such election will be held, and a full and complete statement of the officers, bond proposition, or question of expenditure to be voted on at said election. (2.) At the last regular meeting of the board of education prior to the election, the president of the board, with the consent of the board, shall appoint three (3) judges and two (2) clerks of election for each election district in said metropolitan city, who, before entering upon their duties as such officers, shall take the usual oath or affirmation of office before some person authorized by law to administer oaths, and such oath or affirmation shall be filed with the secretary of the board. (3.) If any person so appointed shall not attend at the time and place of holding such election, or shall fail or refuse to qualify as above provided, the electors present at the polls at the hour of eight (8) o'clock A. M. on the day of the election, shall choose some one to fill the vacancy, and the person thus chosen shall qualify as before provided. (4.) The secretary of the board shall prepare duplicate poll books for each election district in the metropolitan city comprised within the school district, and on the morning of the election shall deliver such poll books, together with a ballot box, into the hands of some one of the judges or clerks of election in the several election districts. The poll books shall be in manner and form as follows: "Poll books of a school election held in the —— election district of the —— ward, in the city of ——, —— county, Nebraska, on the —— day of ——, 189–, at which time —— and —— and —— were judges, and —— and —— were clerks of said election. The following named persons voting thereat: ———." Each clerk shall take one of the poll books and enter therein the names of the persons voting and the order in which they voted. At the close of the election the judges shall compare the lists, and if found correct they shall certify the same to be a true list of the persons voting at said election. At all elections held under the provisions of this act the registration lists of the last city election shall be used without revision, unless said elections provided for in this act shall be held at the same time and place as a city, county, or state election, in which case the registration lists of the city, as revised for said city, county, or state election, shall be used. And it shall be and is hereby made the duty of the city clerk of the metropolitan city comprised within the school district to deliver the registration lists of the city for each election district, respectively, into the hands of some one of the judges or clerks of election in said election district before eight (8) A. M. on the day of said election, for use at said election, said delivery to be made at the expense of the school district. (5.) Immediately before the opening of the polls the judges shall open the ballot box at the place of holding the election, and in the presence of the electors, and shall see that no ballots are contained therein, after which the box shall be closed. The judges shall then declare the polls open, and shall proceed to take the ballot of any person offering to vote, and if such person's name is, by at at least two (2) of said judges found upon at least two (2) of said registers as a qualified voter, the ballot shall be put into the ballot box, without the name or the names thereon being inspected. The ballot box shall be kept locked and in the presence of the electors until the close of the polls. No more than one (1) of the judges shall be absent at the same time from the room where the election is being held, from the time of opening the polls until the votes shall have been counted and canvassed. (6.) The judges and clerks shall commence to **canvass** by counting the votes polled, and if the number cast exceed the number of persons voting, the ballots shall be replaced in the box, and after being mixed, as many ballots shall be drawn out and rejected as there shall have been cast exceeding the number of names on the poll books. If the judges find two or more ballots rolled or folded together, they shall reject all of such votes as fraudulent, and if a ballot contains more than one (1) name for any one office, it shall be deemed fraudulent as to all the names for that office, but no further. (7.) The clerks shall set down in their poll books the name of every person voted for, and the office for which such person received votes, every bond proposition and every question of expenditure written in full, with the number of votes received for such persons and the number of votes cast for and against said bond proposition or question of expenditure, such number to be expressed in words at full length, and the judges and clerks shall certify to the correctness of the same. (8.) The judges of election shall then select some one of the judges or clerks as messenger, and such messenger shall convey the registry list, poll books, and ballot box, with the ballots all replaced therein, to the office of the board of education, within twenty-four (24) hours after the closing of the polls, and said ballots shall be kept in said office and subject to the inspection of any elector for the space of (6) months. (9.) The judges of election shall possess full power and authority to maintain order during any election, and during the canvass of the votes, and may call on any person present to assist in maintaining order; and if any person shall refuse to obey the reasonable order of the judges, or shall in any manner interfere with the judges or clerks of election, or any of them, in the discharge of their duties, such person shall be arrested, and on conviction thoreof shall be fined not less than one dollar ($1) nor more than fifty dollars ($50), and in addition thereto may, in the discretion of the court, be imprisoned not to exceed thirty (30) days for every such offense. (10.) That* board of education shall hold a meeting at the hour of 8 P. M. of the Monday succeeding any election provided for in this act, at which time the secretary of the board, in the presence of the board and two disinterested electors, shall open the election returns, and the board shall thereupon canvass the same and declare the result of the election as shown thereby, and the secretary of the board shall issue certificates of election to such persons as may be declared elected members of the board of education. (11.) Elections provided for by this act, other than elections for members of the board of education, may be held at any time or place in such metropolitan city decided on by vote of all the members of the board; *Provided,* That at all elections held under this act there shall be one polling place in each election district of the city comprised within the school district. (12.) At elections for members of the board of education women may vote after taking the following oath, to be administered by one of the judges of election: "You do solemnly swear (or affirm) that you are twenty-one (21) years of age, that you have resided in this school district for forty (40) days last past; that you own real property in the district, or personal property that was assessed in your name at the last assessment, or have children of school age residing in the district, so help you God." (13.) Any person offering to vote whose name is not found on two of said registers shall furnish to the said judges of election his affidavit, subscribed and sworn to before the secretary of the board of education or before the city clerk or some person designated therefor by the mayor of any city comprised within the school district, giving his reason for not appearing before the supervisors of registration on any day of registration or revision of registration, and shall also set forth in said affidavit his place of residence, and the facts necessary to show that he is a qualified voter in said election district, and shall prove before said judges, by the affidavit on* oath of at least two freeholders, resident of said election districts in which he offers his vote for at least one year immediately preceding said election, that they know such person to be an inhabitant and qualified voter of said precinct, and upon filing said affidavit with said judges, and making the proof herein required, such person shall be entitled to vote. Any person offering to vote at any election herein provided for may be challenged, and the same oaths shall be put as are provided in the general election law.

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* So in original.

Secs. 3756 and 3757. "An act to **require attendance** of all persons between the ages of eight and fourteen years at some public or private school or schools in the state of Nebraska." 1887, p. 613. In force July 1.

3756. That it shall be unlawful for any parent or guardian living in the state of Nebraska to **neglect** or refuse to cause or **compel** any one person or persons who are or may be under their control as their **children** or wards, **to attend** and comply with the rules of some one or more public or private school or schools, for a term of twelve weeks or more during each successive year from the time said children or wards are eight years old until they are fourteen years old inclusive, unless they may be prevented by illness, poverty, inability, or by reason of already being proficient, from attending such public or private school or schools; and provided that in such case they shall be excused by the board of education of the school district in which said children or wards may live at the time of such failure to attend such public or private school or schools.

3757. That any **person** or persons **violating** this **act** shall be subject to a fine of not less than ten dollars nor more than fifty dollars for each and every offense. Said fine shall be imposed by any court of justice having jurisdiction, on sufficient evidence of the same being furnished by two or more credible witnesses, and all fines so collected shall be placed in the general school fund the same as other fines and penalties.

Secs. 3758 to 3767. "An act to provide **cheaper text books**, and for district ownership of the same." 1891, p. 334. In force July 4.

3758. District **school boards**, and boards of trustees of high school districts, and boards of education in cities of the first and second class, are hereby empowered and it is made their **duty** to **purchase all** text **books** necessary for the schools of such district; and they are further authorized to enter into contract as hereinafter provided with the publishers of such books for a term of years, not to exceed five (5); *Provided*, That the contract prices of such books shall not exceed the lowest price then granted to any dealer, state, county, township, school district, or other individual or corporation in the United States, to be determined as hereinafter provided; *And provided further*, That such contract shall guarantee to such districts any further reduction that may be granted elsewhere during the life of such contract.

3759. Before any **publisher** of school books shall be permitted to enter into **contract** with any school district under the provisions of this act, he shall file with the state superintendent of public instruction, to be approved by him, a good and sufficient **bond** in the sum of two thousand dollars ($2,000) to twenty thousand dollars ($20,000) for the faithful performance of the conditions of such contracts, and the observance of the requirements of this act; and such publisher shall also file with the state superintendent of public instruction a sworn **statement of** the lowest **prices** for which his series of text books are sold anywhere in the United States; and a failure to file such bond and sworn statement of prices shall be a good and valid defense on the part of the district against payment for any books that may be sold by such publisher prior to the date of filing such bond and sworn statement of prices; and all such contracts to which such publisher is a party, made subsequent to the passage of this act and prior to filing such bond and sworn statement of prices shall be null and void.

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* So in original.

3760. For the purpose of **paying for** school **books,** the school district officers may draw an order on the county or township treasurer to the amount of school books ordered.

3761. The county or township **treasurer** shall **pay orders,** drawn by school district officers, for the purchase of school books, out of any funds in his hands belonging to the district, except the money received from that derived from the teachers' fund.

3762. Any contract entered into under the provisions of this act with any publisher who shall hereafter become a party to any **combination or trust** for the purpose of raising the price of school text books, shall, at the wish of the school board of the district using such books, become null and void.

3763. The state superintendent of public instruction shall, within thirty days after the filing of the hereinbefore mentioned sworn **statement of prices** of text books, have the same printed and forward a sufficient number of certified **copies of** the same to each of the county superintendents of the state to furnish all the school districts of such county with one copy each; and the county superintendent shall immediately after receiving said certified copies of prices of books, send or deliver one of such certified copies to the director or secretary of each school district or board of education in such county, to be filed as a part of the records of such district; and he shall also file one of said certified copies of prices in his office as a part of the records of said office.

3764. It shall be the duty of the state superintendent of public instruction to prepare and have printed a form of **contract** between the district boards and publishers of school books, and to furnish the same, through the county superintendent, to the several district boards of the state; and no other form of contract shall be used by such district boards and publishers in carrying out the provisions of this act.

3765. Upon the filing of a written **complaint** with the state superintendent of public instruction by the officers of any district board, charging any publisher with **violating** the conditions of such **contract** as hereinbefore mentioned, the attorney general is hereby instructed, and it shall be his duty, to investigate the same, and if he finds probable cause for action he shall immediately begin proceedings in the name of the state to enforce the liability on the bond hereinbefore mentioned.

3766. **All books** purchased by district boards, as hereinbefore mentioned, shall be held as the **property of** the **district,** and loaned to pupils of the school while pursuing a course of study therein, free of charge; but the district boards shall hold such pupils responsible for any damage to, loss of, or failure to return such books at the time and to the person that may be designated by the board of such district.

3767. The provisions of this **act** shall **include all school supplies**; *Provided,* That nothing in this act shall be construed to prohibit any pupil or parent from purchasing from the board such books as may be necessary, at cost to the district; *Provided further*, That the board may designate some **local dealer** to handle books for the district, with such an increase above contract price to pay cost of transportation and handling, as may be agreed upon between said board and said dealer.

CHAPTER 45.—PUBLIC LANDS AND BUILDINGS.

Secs. 3768 to 3784. "An act establishing a board of public lands and buildings of the state of Nebraska, and defining their duties." 1877, p. 188. In force February 13.

3768. That the board created by section 19 of article 5 of the constitution o the state of Nebraska, consisting of the commissioner of public lands and buildings, the secretary of state, treasurer, and attorney general of the state, shall hereafter be known in law as the "Board of Public Lands and Buildings of the State of Nebraska," and shall have general supervision and control of all the public lands, lots, and grounds, and all institutions, buildings, and the grounds thereto, now owned or that may hereafter be acquired by the state, including the saline lands, together with all salt springs, the penitentiary lands, internal improvement lands and lots, as well as the state capitol building and grounds, the state penitentiary and grounds, the state hospital for the insane and grounds, the asylum for the deaf and dumb and grounds, the asylum for the blind and grounds, and all other lands, lots, grounds, and buildings now belonging or hereafter acquired by the state; *Provided, however*, That all lands, lots, grounds, and buildings, or institutions set aside for and devoted to educational purposes, be and hereby are excepted from the provisions of this act.

This does not empower the board to appoint officers of state institutions. This power is in the governor. 18, 340 (25 N.W., 342). Board has not power to appoint and remove officers of state institutions. 6, 291. See 7, 44.

3769. The board of public lands and buildings shall have the power to make general direction, according to law, for the sale, leasing, or other disposition of the lands, lots, and grounds belonging to the state as aforesaid, and shall give warrant by their proceedings as such board to the commissioner of public lands and buildings for his action in the sale or leasing of such lands, lots, and grounds, and shall require of the said commissioner a full and detailed report of all such sales, leases, and the funds thereby acquired as hereinafter directed.

3770. The board shall have general custody and charge of all buildings and institutions and the grounds thereto coming under the provisions of this act, and shall be responsible for the proper keeping and repair of the same, and shall require from the commissioner of public lands and buildings, who shall be direct custodian of such institutions, buildings, and grounds, a report, at least once in every three months, as to the condition of the same; *Provided*, That no additions shall be made to any public buildings without special appropriation of the legislature.

3771. The said board shall have power, under the restrictions of this act, to direct the general management of all the said institutions, and be responsible for the proper disbursement of the funds appropriated for their maintenance, and shall have reviewing power over the acts of the officers of such institutions, and shall, on the part of the state, at regular meetings as hereinafter directed, audit all accounts of such officers, including the accounts of the commissioner of public lands and buildings, except his salary.

3772. At the regular meeting of the board it shall be their duty to examine the accounts of the public officers contemplated in this act and to determine whether the same are entitled to be paid out of the moneys appropriated for the purpose of maintaining the institutions for which they are charged, and if correct, shall approve the same, which approval shall be signed by the president and countersigned by the secretary under date of such action; and if the accounts be incorrect or exorbitant, or not entitled to payment from such appropriations, the same shall be disapproved and returned to the claimant, such board keeping a record of the same.

3773. When the **accounts** above mentioned have been filed with the board, and shall have been audited and approved by them, the auditor of public accounts is hereby authorized and directed, upon the presentation to him of such accounts so authenticated, to issue his warrant on the treasurer against the proper fund or appropriation, for the amount therein stated, to the claimant or his assignee. And no accounts coming under the provisions of this act shall be entitled to **payment** until they have been so approved by the said board.

3774. It shall be the duty of the board to take cognizance of all **charges** or complaints made **against** the said public **officers,** and at a regular meeting, to give an impartial **hearing** to such charges, and the defense against them, if any, and report the charges, evidence, and their conclusions in the matter, to the governor, within six days after the determination of such investigation.

3775. The said **board** shall **meet** at least once in each month, on the first Monday thereof, for the transaction of business; the commisioner of public lands and buildings shall be ex-officio **president** of the board, and shall preside at all meetings and execute all other duties prescribed for him in this act, and shall sign all papers and instruments or documents that shall be approved, made, or directed by the board.

3776. The secretary of state shall be ex-officio **secretary** of the board, and shall keep a careful record of all the proceedings of the board in a substantial and well bound book, to be kept for that purpose, and which shall be known as the "Record of the proceedings of the board of public lands and buildings of the state of Nebraska," and the said secretary shall countersign all papers, instruments, or documents approved, made, or directed by the board.

3777. It shall **necessary** for at least three **members** of said board to be **present** at any meeting for the transaction of business, and in absence of the president or secretary, the place shall be filled by election *pro tempore; Provided,* That no meeting for business shall be held without the presence of one or the other of them.

3778. The president shall have the power to call the board together in **special meeting,** if in his judgment the public good requires the same to be done for any purpose contemplated in this act; and such call shall be by written notice, stating the purpose of meeting, which notice shall .be delivered to each member of the board.

3779. It shall be the duty of the board at their first meeting after the passage of this act to direct the commissioner of public lands and buildings to procure an authentic **list of** all the **lands** that have come into possession of the state by donation or purchase, or otherwise, that come under the provisions of this act, and enter the same in numerical order, each under the class of lands to which it belongs, in a tract book to be procured and kept for that purpose; and they shall see that all deeds of conveyance, confirmation of selection, certificate, or other direct evidence through which the state derives title to the said lands, are recorded in the counties in which the lands are situated; and that all original documents conveying or confirming titles of land to the state shall be collected and placed in the office of the commissioner of public lands and buildings, and by him recorded in a book to be kept for that purpose; and the said commissioner shall thereafter be the proper custodian of all such records and papers relating to the lands mentioned in this act.

3780. When such lists shall have been obtained, the board shall proceed with the said commissioner to check from land records now in possession of the state, all the lands and lots that have been alienated by sale, donation, or otherwise, and by what other means necessary ascertain and enter under a **corrected list,** a true list of all the lands, lots, and grounds, now the property of the state as aforesaid, specifying for what purpose such lands, lots, or grounds are dedicated and set aside, and entering in a column opposite the tract in each case the appraised value of the same; which books and lists, when completed, shall be kept in the office of the commissioner of public lands and buildings.

3781. The board shall, as soon as practicable, provide for an **appraisement** of all such lands and lots, and enter the same of record as aforesaid; and shall, when the public good requires the same, as directed by the legislature, authorize the commissioner of public lands and buildings to **advertise and sell,** according to law, such portion of said lands and lots as is necessary to meet the requirements of the state as directed by law.

3782. The board shall require the several officers in charge of the institutions and buildings of the state, coming under the provisions hereof, to make out a correct **schedule of** all **property** in their charge belonging to the state, to be certified under oath, which shall be filed with the secretary of the board, and a copy thereof furnished to the commissioner of public lands and buildings, together with a list of buildings and grounds.

3783. All **laws** now in force relating to the public lands and buildings not in conflict with the provisions of this act shall **apply** to this board, and all laws conflicting therewith are hereby repealed.

3784. It shall be the duty of said board, at their first meeting, to cause to be published in at least three papers of general circulation, one of which shall be published in Lincoln, one in Omaha, and one in Chicago, advertisements for sealed proposals for the **leasing** of penitentiary and penitentiary grounds and **convict labor.** Said proposals shall provide further for payment of all penitentiary expenses, including salaries of officers, and other help, the heating of the buildings, boarding and clothing convicts. The cost at all times shall be estimated per capita. Said board shall have power to make contracts with lowest bidder, for a term of not more than ten years; *Provided,* No bid shall be received where the net cost per capita shall exceed sixty cents per day, and the estimate shall be on convicts only. Any contract entered into shall provide that the general management and discipline of the convicts shall be under the control of said board and the warden, and no contract shall be made which shall deprive the convicts of any privileges granted by law.

Secs. 3785 and 3786 formed ch. 24, R. S. 1866, p. 186, entitled "Improvements on Public Lands."

3785. All **contracts,** promises, assumpsits, or undertakings, either written or verbal, which shall be made hereafter in good faith, and without fraud, collusion, or circumvention, **for sale,** purchase, or payment of **improvements** made on the lands owned by the government of the United States, shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts.

3786. All deeds of quit-claim, or other conveyance, of all **improvements** upon **public lands,** shall be as binding and effectual in law and equity between the parties, for conveying of the title of the grantor in and to the same, as in cases where the grantor has the fee simple in the premises.

Sale of interest in homestead claim on public lands together with the improvements, good consideration for promissory note. **7,** 422. Note given for purchase price of improvements is valid. **13,** 505 (14 N. W., 480). Sale and surrender of a homestead claim on public lands, together with improvements thereon, good consideration for a promissory note. **21,** 646 (33 N. W., 271). Surrender of homestead right and improvements good consideration formoney. **21,** 368, (32 N. W., 155).

Sec. 3787. "An act to **relieve parties holding contracts** for the purchase or lease of lands from the state without first having been offered for sale at public sale." 1887, p. 524. In force March 31.

3787. That in cases in which **contracts** for the sale or lease of lands owned by the state have been duly signed, executed, and delivered to the purchaser or purchasers or lessees in said contract named, by the proper state officers, the **omission** on the part of the proper officers to have first offered such lands at public sale shall not **invalidate** the private sale or leasing of such lands; but the purchaser or purchasers or lessees in such contracts mentioned, or their assignees, upon performance by them of the covenants and conditions on their part, by the terms of said contracts to be done, kept, and performed, shall be entitled to a deed or contract of sale from the state for such lands, and the proper officers of the state in such cases are hereby authorized and directed to make, execute, and deliver to such purchaser or purchasers or lessees, or their assignees, deeds or contracts of sale from the state therefor, which said deeds, when properly executed and delivered, shall convey all right, title, and interest of the state in and to the lands described therein.

Secs. 3788 to 3791. "An act to provide for **recording** the **state's title** to certain lands," 1872, p. 7. In force January 19.

3788. That it shall be and is hereby made the duty of the governor, immediately after the passage of this act, to cause true **copies of** all **communications** from the secretary of the interior department of the United States, now on file in any department of this state, in or by which any lands or selections thereof have been confirmed or certified to this state under or by virtue of any grant or act of congress, to be prepared and certified under the state seal, and **recorded** in each of the counties of this state in which any of the lands in such copy described are situated.

3789. That whenever any **communication** shall hereafter be **received** by the governor, or at any of the departments of the state government, from the secretary of the interior, when or whereby any lands or selection thereof shall be confirmed or certified to this state, under or by virtue of any grant or act of congress, it shall be the duty of the governor to cause a copy thereof to be prepared, certified, and recorded in the manner specified in the first section of this act.

3790. That it shall be the duty of the several county clerks to whom any such copy shall be presented, to **record** the same in the book or books in which land patents are or may be recorded, and in the order in which such copy may be received; and such clerk shall be entitled to the same **fees** for recording such copies as are allowed by law for recording deeds, which fees shall be paid them out of the general fund, upon the warrant of the auditor therefor.

3791. That each such **copy,** in this act provided for, the record thereof, on a transcript of such record certified under the hand and seal of the county clerk in whose office the same shall be recorded and shall be **received in** all courts and places whatever as **evidence** of each and every fact and thing therein stated, as well as of the absolute title of the United States in and to the lands therein described, at the date of such communication.

Secs. 3792 and 3793. "An act to provide for the **relinquishment of** the **title** to lands filed upon supposed to be land belonging to the United States, and public lands settled upon and improved before the survey thereof." 1881, p. 257. In force March 3.

3792. That whenever any person has been allowed a homestead or **pre-emption** filing on land in any United States land office in the state of Nebraska, **supposing** the **land** to belong to the United States, or supposing the same to be **open** to homestead or pre-emption settlement because of being settled upon and improved before the survey thereof, and having made valuable **improvements** thereon, or any person having purchased the filing of any such lands, and afterwards ascertaining that the said lands belong to the state of Nebraska, the person entitled to said lands shall be required to make a showing to the board of educational lands and funds, under oath, that his filing was made in **good faith** and not for the purpose of speculation, and that he supposed the land belonged to the United States at the the time he made the homestead and pre-emption filing or purchased the said filing.

3793. That upon receiving such a showing the said board shall examine into said showing, and if it is satisfied that said claim is a just and proper claim, and made in good faith, and that the United States will **deed to** the state of Nebraska, land in place of that upon which the **appliant** has filed or purchased a filing, the said board shall order a deed, executed by the governor of the state of Nebraska to the United States, for said lands, to allow said party to complete his title under the United States laws, and thereupon the governor shall execute a deed of relinquishment to the United States for the said lands.

SALINE LANDS.

Secs. 3794 to 3804. "An act to provide for the sale and leasing of the saline lands and the development of the saline interests of the state of Nebraska." 1885, p. 360. In force June 5.

3794.—That the board of public lands and buildings of the state of Nebraska are hereby directed to adopt such measures within sixty days after this act has become a law as will authorize and require the commissioner of public lands and buildings to make a careful **appraisement** of all the saline lands owned by the state on the 1st day of March, 1885, and separately appraise any and all improvements thereon except that portion of section 21 now owned by the state, and all of section 22, and the south half of section 15, all in the township number ten north, of range six east, of the sixth principal meridian; and also except each and all of the salt springs owned by the state, and forty acres of land, with each spring upon which the same is situated. The expense of said appraisement shall be audited by the board of public lands and buildings, and paid out of the saline fund, created as hereinafter stated, and as nearly as may be as provided in section 8 of this act [3801].

3795. That said commissioner of public lands and buildings, when the said lands have been appraised, shall make a report of the same, with the appraised value thereof, to the board, and also the appraised value of the improvements on said land, and keep a record thereof in his office, and the said board, upon receiving such report, shall at once direct the said commissioner to advertise the lands appraised as aforesaid for sale in at least three newspapers in the state for thirty days before the day of such sale, and on the day mentioned in such **advertisement** the said lands shall be offered for sale at public auction, and sold to the highest bidder therefor; *Provided*, Said lands shall be offered in tracts not exceeding one hundred and sixty acres at one time, and shall not be sold at less than the appraised value thereof, exclusive of the appraised value of the improvements on said land, and for the purpose of making such **sale** the commissioner aforesaid is hereby authorized to employ a competent crier or auctioneer, who shall be paid from proceeds of sales at a rate not to exceed three dollars per day. The said lands remaining unsold after having been offered at public sale as aforesaid, shall be kept in the market for private sale at the office of said commissioner for such time as the board may deem proper, not to exceed one year subsequent to such sale, when the residue, if any, shall be advertised in like manner and again offered at public sale. And in case any of said lands shall remain unsold after having been offered at public sale the second time, such remaining lands shall be re-appraised and again offered for sale at public auction, upon notice of such sale being given as above provided, and the lands remaining unsold after having been offered at public auction under the appraisement shall be kept in the market at private sale, at the office of the commissioner, for such time as the board may deem proper, but in no case shall any of said lands be sold for less than the appraised value thereof in addition to the appraised value of the improvements thereon, and all the proceeds realized from such sales shall be deposited by the commissioner of public lands and buildings in the state treasury (except the amount realized from the improvements upon said lands, which amount shall be immediately paid to the owner or owners of said improvements), making also a detailed statement to the board of the lands sold, and the funds received therefor, and such moneys, when deposited with the treasurer, shall constitute what shall be known as the saline fund of the state, and disbursed in the manner hereinafter set forth, and no other; *Provided*, That only so much of said lands shall be sold as may be necessary to raise the amount hereby appropriated, and that none of said lands shall be sold for less than seven dollars ($7) per acre.

3796. Whenever any of the lands shall be sold and the **purchase** price paid, the commissioner of public lands and buildings shall issue a voucher to the purchaser under his seal, showing the name of the purchaser, the description of the land sold, the purchase price, and that the same has been duly paid. The purchaser, his agent or attorney, shall file said voucher in the office of the governor, and the governor shall thereupon issue to the purchaser a deed or **patent** from the state of Nebraska, conveying to him the land described in the voucher, which deed or patent shall be duly countersigned by the secretary of state, and shall then be entitled to be recorded in the record of deeds of the county in which the lands are situated.

3797. The said board of public lands and buildings may order the **commissioner to** make a **contract** on the part of the state, subject to the approval of the board, to such persons or corporations that are residonts of this state, or incorporated under the laws thereof, as will first at their own expense prove to the satisfaction of the board that the brine now obtained is of sufficient quantity, quality, and strength to justify the state in the expenditure for the dykes and ditches hereinafter named, by actually manufacturing from said brine one hundred barrels of salt per day for thirty consecutive days.

Rewritten 1887, p. 528.

3798. After the said persons or corporations shall have manufactured one hundred barrels of salt per day for thirty consecutive days, it shall be the duty of the board to direct the said commissioner to make such **contract** or contracts on the part and behalf of the state as may be necessary, subject to the approval of the board, for building all **dykes** and digging all **ditches** which may be necessary to prevent what is known as the big salt basin, situated on sections twenty-one (21) and twenty-two (22), in township ten north, of range six east, of the sixth principal meridian, from being flooded with fresh water, and the said commissioner is hereby authorized to employ a suitable and skillful engineer and necessary assistants to examine the grounds, estimate the work, and ascertain and report what dykes and ditches are necessary for the purpose aforesaid, and the estimated cost of the same, and said board are authorized to audit and allow a reasonable compensation for the services of such engineer and his assistants.

Rewritten 1887, p. 529.

3799. Whenever such persons or corporations shall have proved to the satisfaction of the board that they have manufactured from the brine in the basin one hundred barrels of salt per day for thirty consecutive days, then the said board may order the commissioner to enter into **contract** with such persons or corporations for the

manufacture of salt; *Provided, however,* That such persons or corporations shall be at all the expense incurred in the manufacture of salt, except as provided in section 5 [3798]; *And provided further,* That the lessee shall at all times continue in operations and manufacture of salt, and said contract shall provide that if said persons or corporations shall fail, neglect, or refuse to manufacture salt for the period of six months, that the contract may, at the option of the board, be forfeited.

Rewritten 1887, p. 530.

3800. It shall be the duty of the board for the purpose of developing the geological formation of the state to continue the **sinking of** the **well** now in operation until the depth of two thousand (2,000) feet has been reached, and to provide for keeping a correct geological **record of all strata** passed through, and for this purpose they are hereby authorized to employ a competent geologist to keep such record, and to pay him therefor out of the saline fund a reasonable compensation, not to exceed one hundred dollars ($100) per month.

Amended 1887, p. 530.

3801. The **board** shall from time to time, as the work progresses and the money is being expended by them in carrying out the provisions of this act, **issue vouchers** to the persons entitled to the same, and the auditor is hereby authorized and directed to draw his warrant on the treasurer against the saline fund of the state for the amount of said voucher; *Provided, however,* That in cases when work is being done under contract, the board shall, in issuing the voucher, retain twenty per cent of the estimated amount of labor done under said contract, and only issue a voucher for eighty per cent of the same, until the whole contract shall have been complied with, and the work shall have been accepted by said board, and after such acceptance the board shall issue a voucher for the whole balance remaining unpaid on said contract.

Amended 1887, p. 531.

3802. The said board are hereby authorized and directed to enter into such contract or contracts and **lease** or leases on the part of the state with persons or corporations who have complied with the conditions contained in section 4, in reference to the manufacture of one hundred barrels of salt per day for thirty consecutive days, for the manufacture of the brine which flows on the big salt basin, or which may be pumped thereon, into salt, as will best secure the manufacture of salt on the largest scale and insure the permanent development of the saline interests of the state of Nebraska, and for this purpose the said board are authorized to lease to the persons or corporations entering into contracts with the state for the manufacture of salt any and all saline lands owned by the state and lying contiguous or near to and including the big salt basin, for the purpose of allowing said lessees and contractors to erect on said lands, buildings, vats, reservoirs, aqueducts, arches, fixtures, and machinery necessary or convenient to have in the manufacture of salt. All of said contracts for the manufacture of salt from said brine, and the leases on said lands for erection of fixtures for the manufacture of the same, shall expire on the first day of January, A. D. 1920, and each of said contracts shall contain the following conditions and stipulations: *First*—That the said lessees and parties entering into contracts with the state shall pay into the saline fund of the state of Nebraska, in consideration of the privilege of manufacturing salt from the brine which flows or may be pumped on the big salt basin, one cent a bushel of seventy pounds on all salt manufactured during the continuance of such contract or lease. *Second*—That the said contractors or lessees shall commence the **manufacture of salt** within such time as shall, in the opinion of the board, be consistent with the equitable rights of the contractors and the best interests of the state. *Third*—The contractors and lessees, their heirs and assigns, at the expiration of said contracts and leases, shall at their option surrender up the demised premises and remove therefrom all buildings, vats, arches, machinery, fixtures, and property of every kind belonging to them, or demand in writing a renewal of their contracts and leases of said board, and the state shall at its option either renew said contracts and leases or take possession of all such buildings, vats, arches, machinery, fixtures, and property, and pay to the contractors and lessees, their heirs and assigns, a just compensation therefor, the value to be determined by disinterested appraisement, the appraisers thereof to be appointed by the said board of public lands and buildings. *Fourth*—Each person, or if a firm or association or some member thereof, or if a corporation, the secretary thereof, shall make a return under oath to the commissioner of public lands and buildings on the first day of August and December of each and every year during the continuance of the lease or contract, in such form as he may prescribe, the amount of salt manufactured by each person, firm, association, or corporation, not previously reported, and pay the rent or royalty hereinbefore provided for, and a failure on the part of the contractors or lessees to make such report and pay the rent or royalty aforesaid for the space of ninety days after the report should have been made or the royalty paid shall forfeit said lease or contract.

Amended 1887, p. 531.

3803. It shall be the duty of the board of public lands and buildings to see that all dykes and ditches and other **property** belonging to the state and used in and about the manufacture of salt, as in this act contemplated, are **kept in** good **repair,** and the commissoner of public lands and buildings is hereby authorized to enter into all necessary contracts for that purpose. The expense of said repairs shall be paid out of the saline funds, and as nearly as may be in the manner prescribed by section 8 of this act [3801].

Amended 1887, p. 533.

3804. That the **sum** of fifty thousand dollars, or as much thereof as is necessary, is hereby **appropriated** out of the saline fund of the state for the purpose of carrying into effect the provisions of this act, and the auditor is hereby authorized and directed to draw his warrant on said fund for that purpose.

Secs. 3805 to 3811. "An act to provide for the **leasing** of the **saline lands** belonging to the state of Nebraska." 1889, p. 580. In force July 1.

3805. That the board of public **lands** and buildings shall cause all the saline lands of which the title is now vested in the state, "except that leased to the Nebraska Stock Yards Association," be offered **for lease**; *Provided,* That the lands now leased to the Nebraska Stock Yards Association shall, upon the termination of said lease or leases, be subject to all the conditions of this act.

3806. The commissioner of public lands and buildings shall cause suitable **abstracts** to be made, showing the section, town, and range, and appraised value.

3807. When the **abstracts** are made as shown in section 2 [3795], the commissioner of public lands and buildings shall cause a copy of said abstracts to be **sent to** the county commissioners of the **county** in which the land is situated, and shall instruct them to appraise the said lands at their true **value** for leasing, and separately appraise any and all improvements thereon, and make returns of the same to him, under oath; *Provided,* That the lands shall be appraised in forty-acre tracts or government subdivisions.

3808. After the said appraisement shall have been made and returned as provided in section three, the commissioner of public lands and buildings shall cause **notice** to be given for 30 days in two newspapers of general circulation in the county, that the lands will be offered for lease at public bidding, stating the day and hour of the commencement of such public offering, and he shall continue from day to day until all of the said lands have been offered; *Provided*, That persons bidding off lands do not enter into lease for the same immediately, they will be again offered for lease before the public offering is closed.

3809. All leases shall be made at a **rental** of six per cent on the appraised value, payable annually, in advance, and in addition thereto the lessee shall pay the appraised value of the improvements on said land, which amount shall be immediately paid to the owner or owners of said improvements. Applications for the lease of any such lands not leased at public offering may be made at any time to the commissioner of public lands and buildings; *Provided*, That if there be two or more persons wishing to lease the same land, the said commissioner shall auction off and lease the land to the person who, in addition to the six per cent rental, will pay the highest cash bonus for the lease. Each lease shall contain a covenant or contract that the land contained in such lease may be appraised every five years; also, that at the expiration of twenty years the lessee shall deliver up to the state the said land.

3810. The **board** of public lands and buildings shall, as soon as sufficient amount of **interest** or rental accumulates in the treasurer's hands, **invest** the same in registered school district or registered municipal bonds, and the treasurer shall hold the same as a permanent saline fund.

3811. If the lessee defaults in the payment of his interest or rental for more than one year, the commissioner of public lands and buildings may cause notice to be given and **forfeiture** ensue as provided in section 16, chapter 80, Compiled Statutes of 1887 [3831], and when so forfeited it shall again be offered for lease, after having again been advertised as provided in section four of this act.

Secs. 3812 to 3815. "An act to enable **school districts, churches, and cemeteries** to **purchase land** from the state." 1885, p. 333. In force June 5.

3812. The **school district** in which there be state land, school land, land of the school fund or otherwise, is empowered to **purchase** from the **state** any portion of such **land,** not exceeding forty acres, for school purposes, at not less than seven dollars per acre, and at the appraised value, which appraisement shall be made by the county treasurer and as many as two of the school officers of such school district, without compensation.

3813. That any **church** or cemetery association or corporation having control of a cemetery in a school district where there be such land referred to in the first section of this act, such church association or corporation may **purchase** from the **state** any portion of such **lands,** not exceeding ten acres, for church or cemetery purposes, at the appraised value. Such appraisement may be as provided for in sales of school lands to individuals; *Provided*, That when such land hath been previously the land required may be purchased at the former appraisement, but not lower than seven dollars per acre.

3814. That in the event of there being a school house, cemetery, or church building being located upon school **land** or any land of the state which has been or may hereafter be **sold** to any individual, corporation, or parties, such school district, church, or association, with the written consent of the purchaser or occupant, may purchase land for the purposes specified and obtain a deed from the state at the price of the purchaser, assignee, or occupant is to pay. The sum so paid for the tract obtained for such special purpose shall be deducted from the price the original purchaser was to pay.

3815. **Sales** of land made for the special purpose herein contemplated shall be for **cash,** and if there be buildings on such land belonging to the state, such buildings are to be appraised and sold separate.

SCHOOL LANDS.

Secs. 3816 to 3849. "An act to provide for the registry, sale, leasing, and general management of all lands and funds set apart for educational purposes, and for the investment of funds arising from the sale of such lands," etc. 1885, p. 335. In force June 5. (Repealing act of 1883, p. 302.)

3816. That the board of commissioners provided for in section one of article VIII of the constitution, consisting of the governor, secretary of state, treasurer, attorney general, and the commissioner of public lands and buildings, shall cause all school, university, normal school, and agricultural college lands now owned by, or the title to which may hereafter vest in the state, to be registered, sold, and leased, and the funds arising from the sale thereof to be invested in the manner provided by this act.

3817. The commissioner of public lands and buildings shall, under the direction of the board, cause suitable abstracts to be made of all the lands owned by the state for educational purposes, and entered in suitable and well bound books. Such abstracts shall show in proper columns and pages the county in which each tract is situated; the section, part of section, township and range; whether timber or prairie; whether improved or unimproved; the value per acre; the value of improvements, and total value. In another book or books shall be shown the date of sale, name of purchaser, price per acre, amount paid in cash, amount unpaid, amount of annual interest, names of sureties on notes, date of lease, name of lessee, amount of annual rental, date of patent and when recorded, and such other columns as may be necessary to show full and complete abstract of the condition of each tract of land, from the time title was acquired by the state until final payment by the purchaser, and the issue of a deed for the land.

3818. When the abstracts provided for in section two are made by the commissioner of public lands and buildings, the board of educational lands and funds shall cause a list of the lands described in such abstracts to be forwarded to the chairman of the board of county commissioners or supervisors as the case may be, and the lands embraced in said list shall be appraised in the same manner as provided in section fifteen of this act in the case of private sale, and the said appraiser shall subscribe to an oath before some proper officer to properly appraise the prairie lands in tracts not to exceed forty acres each, the timber lands in tracts not to exceed ten acres each, and to appraise any improvements thereon, and to make due and prompt return to the commissioner of public lands and buildings, who shall enter the appraisement upon said abstracts; *Provided*, That the lands in any of the organized counties of this state not now appraised shall be ordered appraised upon a petition, signed by not less than one hundred of the taxpayers, residents of of said county, approved and certified by the board of commissioners in such county, to the board of public lands and buildings, asking that the lands in such county shall be appraised for the purposes of lease and sale as provided by this act.

3819. The said board may, when they deem it to the best interests of the state, cause any unsold lands, the sale and leasing of which is regulated by this act, to be reappraised, and the reappraised value thereof entered upon the abstract hereinbefore provided for.

3820. In all counties where the educational lands or portion thereof have been appraised, the commissioner of public lands and buildings shall, in person or by agent, attend at such times as the board may direct, but not more than once in one year, and offer at public auction all the unsold lands, except such as have been leased, to the highest bidder; *Provided*, No person can purchase more than six hundred and forty acres; *Provided*, That the agent herein provided for shall be the county treasurer of the county in which such lands be situated; *Provided*, That **notice** of such sale, and the time when and the place where the same shall be held, shall be given by publication made four consecutive weeks in some newspaper published in the county, or in case no newspaper is published in the county, then in some newspaper of general circulation therein; and proof of such publication shall be made by the affidavit of the printer, his foreman, or principal clerk, or other person knowing the same, which shall be filed in the office of the commissioner of public lands and buildings; *Provided further*, That no lands shall be sold for less than the appraised value thereof, or sold for less than seven dollars per acre, in addition to the improvements on said land.

3821. **Payment** for lands sold under the provisions of this act shall be made as follows: For prairie lands at least one-tenth of the purchase price, cash in hand, or such other sum more than one-tenth as the purchaser may desire to pay; other lands one-half cash in hand, or cash down for either, at the option of the purchaser. Notes shall be given by the purchaser for the unpaid principal of all lands sold on time, and shall be due in twenty years from date of sale, unless, at the option of the state, the same shall sooner fall due by reason of the failure of the purchaser to perform the covenants of his contract. The rate of **interest** on all unpaid principal shall be six per cent per annum, and shall apply to all past or future sales of educational lands made by this state, and shall become due and payable as follows: On the day of sale the interest on the unpaid principal shall be computed, and paid up to the first day of January next ensuing, and thereafter it shall become due and payable annually, in advance, on the first day of January of each year; *Provided*, That nothing in this act shall be construed as to prevent the purchaser from making full payment of principal at any time during the year, providing the interest shall have been paid up to the first day of January next ensuing.

Amended 1887, p. 616.

3822. **Payments** made at such sale shall be made to the county treasurer, who shall deliver to the person making such payment a **receipt** therefor, and any person making full payment shall, upon the presentation of his receipt therefor to the board, be entitled to receive a deed from the state.

3823. When the educational lands or portion thereof in any county shall have been appraised by order of the board of educational lands and funds, it shall be the duty of the commissioner of public lands and buildings to prepare a **list of** all the educational **lands** in that county, and transcribe them in a well bound book, which list shall show essentially the same statements as are shown by the original list kept in the office of the commissioner of public lands and buildings, with the appraised value entered, which book shall be forwarded to the county treasurer before the day set for sale, and shall be by him kept as of record in his office, and in which shall be kept a **record of** all **sales** or leases thereafter issued or made in that county, and the said treasurer shall use due diligence to collect all money by his books or the records of the commissioner found to be due. When payments are made he shall deliver a receipt therefor to the person paying the same, a duplicate of which he shall file in the office of the county clerk, to be by him transmitted to the commissioner of public lands and buildings, and when by said commissioner found correct and entered of record, shall be filed with the auditor of public accounts, and the original receipts shall be countersigned by said clerk and returned to the party making such payment, and no receipt shall be held valid unless countersigned by said clerk.

3824. Any person purchasing lands upon which **improvements** have been made by any other person, the purchaser shall pay the full price of said land and improvements to the county treasurer, and the treasurer shall pay the appraised value of the improvements in cash to the person owning the same, and any person having made improvements on any land sold to another may, at any time before receiving the appraised value thereof from the county treasurer, and within six months from the day of sale, remove such improvements from said land, and upon such removal the said treasurer shall return to the purchaser the appraised value of the improvements; *Provided*, That any person that has heretofore occupied or improved any of the educational lands that have not been appraised may apply in writing to the chairman of the county board to have such land appraised for the purpose of lease or purchase, and such land may then be leased or purchased the same as other land under the provisions of this act; *Provided*, That such appraisal shall be made within six months from the taking effect of this act.

3825. Upon any public or private sale of lands had under this act upon which full payment has not been made, as herein provided, the commissioner of public lands and buildings shall issue a **certificate of purchase** with the seal of his office thereto attached, showing the land purchased, the amount paid, the amount due, and the time when the interest and principal are due, and upon payment of such amount according to law, the purchaser or his assignee shall be entitled to a deed of said land; *Provided*, That the commissioner of public lands and buildings shall cause to be furnished the necessary blanks and reasonable rules and regulations to carry this act into effect.

3826. Whenever **payments of interest** are made to the county treasurer, as herein provided, he shall endorse the amount paid upon such certificate of purchase.

3827. When the board becomes satisfied that full payment has been made upon any tract of land heretofore or hereafter sold, the governor shall, under the great seal of the state, issue a **deed** therefor to the purchaser or his assignee, and all deeds so issued shall be attested by the commissioner of public lands and buildings, and a record thereof kept in his office.

3828. Any person purchasing land under the provisions of this act may at any time **pay any portion of** the **principal** thereon to the county treasurer of the county in which the land is situated, who shall give the same receipt as he is required to give when payment of interest is made, and the county clerk shall transmit one of said receipts to the commissioner of public lands and buildings, and the said commissioner shall credit the amount of principal so paid upon the account of said sale contract, and file said receipt with the auditor of public accounts, as in other cases.

3829. Immediately after the close of the sale provided for in section five all unsold lands shall be subject to **lease,** at a rental of six per cent on the appraised value. Applications for the lease of any such lands shall be made to the county treasurer, at a county seat, and shall contain an affidavit that the applicant is not the owner of a lease of more than 640 acres of state educational lands, including the amount called for in the application, and desires to lease for his own use and benefit; and such application shall be accompanied by the amount due as **rental,** to the first day of July or January, as the case may be; *Provided*, That if two or more parties desire to lease the same land, the treasurer or commissioner of public lands and buildings, if he be present, shall proceed to auction off and lease the same to that person who, in addition to six per cent rental, will pay the highest rate per cent on the appraised value of said lands for said lease. If improvements are shown by the appraisal to be located upon said land, the person other than the owner of them who is the highest bidder shall deposit with the county treasurer the appraised value of said improvements in addition to said premium and first payment of rental; the value of said improvements to be paid to the owner of them, or if said owner is dissatisfied with such amount he may, within six months, remove said improvements. Upon the payment to the treasurer of the rental and premium, if any, he shall issue his receipt in duplicate, specifying on what amount the money is paid, and the application for lease and duplicate receipt for money paid shall be transmitted by the treasurer to the commissioner, who shall, if the foregoing proceedings appear to be regular, issue and transmit to the county treasurer a contract of lease to be by him transmitted to the lessee. Each **lease shall contain** a covenant or contract that the board of educational lands and funds may, during the year 1888, and every five years thereafter, provide for the reappraisal of such lands, that the lessee will promptly pay the rental semi-annually in advance; that no waste shall be committed upon the land, and that the premises shall be surrendered at the expiration of twenty-five years from the first day of January next ensuing after the date of the lease, or sooner, with the consent of the commissioner; that the lessee will pay for the use of said lands the annual rate of six per cent per annum upon the appraised value, and that upon a failure to pay the agreed rental for the period of six months from the time said payments are due, the said lease may be forfeited and fully set aside as provided in section sixteen of this act [3831]; and no assignment of such lease contract shall be valid unless the same be entered of record in the office of the commissioner of public lands and buildings. The premium paid into the state treasury shall be credited to the temporary school fund; *Provided*, The said board shall have a reviewing power over the acts of appraising under this section.

Amended 1887, p. 617. Lease is personal property and may be sold by administrator. **26**, 316 (41 N. W., 1117). Board cannot be compelled to lease lands to one who refuses to comply with his bid, but makes another bid therefor. **18**, 597 (26 N. W., 386).

3830. Any lessee of any educational land may apply in writing to the chairman of the board of county commissioners, or supervisors, as the case may be, to have the **land** embraced in his lease **appraised for** the purpose of **sale.** And it shall be the duty of said county commissioners, or a majority of them, or if the county is under township organization, three of the supervisors to be designated by said board from among their number, or a majority of such designated supervisors to view the land so desired to be purchased by such lessee, and return a true and correct value of said land under oath. The material facts of such return shall be reported to the said board of county commissioners, or supervisors, and entered upon the record books of their proceedings. After the foregoing proceedings have been had, the applicant to purchase may pay to the county treasurer the appraised value of said land, and shall then be entitled to receive the deed for the same upon forwarding the proper evidence of such appraisal and payment of the purchase price to the commissioner of public lands and buildings; *Provided*, That such applicant to purchase may at his option pay any sum not less than one-tenth of said purchase price if the land be prairie land, not less than one-half of said purchase price if the land be timber land, and upon the forwarding of such application to purchase abstract of sale showing description of land, amount of sale, amount paid, amount unpaid and name of purchaser, with a duplicate of all receipts issued by the county treasurer to such applicant to purchase, to the commissioner of public lands and buildings, the said applicant shall be entitled to a contract of sale as provided in section ten (10) of this act [3825]; *Provided further*, That no land shall be sold for less than seven dollars per acre, and the applicant to purchase shall pay the sum of three dollars per day and five cents per mile for each mile necessarily traveled to each appraiser in the making of such appraisal; **Provided further*, That the *pro rata* proportion of the rental for the unexpired time for which such rental has been paid in advance shall be credited on the contract of purchase.

All after * added 1891, p. 338.

3831. If any **lessee** of educational lands shall be **in default** of the semi-annual rental due the state for a period of six months, or any purchaser of educational lands be in default of the annual interest due the state for one year, the commissioner of public lands and buildings may cause notice to be given to such delinquent lessee or purchaser that, if such delinquency is not paid within six months from the date of the service of such notice, his lease or sale will be declared forfeited by the board of educational lands and funds. If after such notice the amounts due are not paid within six months from the date of the service of such notice thereof the said contract of lease or sale may be declared forfeited; and the lands therein described shall revert to the state the same as though such lease or sale had never been made; and the order making such forfeiture shall be spread upon the records of the board of educational lands and funds. In case the owner of such contract of sale or lease be a non-resident of this state, or his address be unknown, the **notice** herein contemplated shall be published three weeks in some newspaper published or of general circulation in the county where the land is situated. The forfeiture may be entered by said board after ninety days from the date of such published notice. The provisions of this section shall apply alike to all the lands heretofore sold or leased, and to all lands hereafter sold or leased as educational lands of this state; *Provided*, The owner of any contract of sale or lease so forfeited may redeem the same by paying all delinquencies and costs at any time before such land is again sold or leased..

No forfeiture because of default in payment until notice to purchaser by county treasurer. 5, 407. Board may declare lease forfeited six months after this notice is given. 17, 690 (24 N. W., 337).

3832. If any person shall commit **waste or trespass**, or other injury, upon any of the lands herein referred to, the person so offending shall, on conviction thereof, be fined in a sum not less than twenty-five dollars nor exceeding one thousand dollars.

3833. If any purchaser of timber land shall, before receiving his title in fee simple therefor, cut or **destroy** any **timber** on said land, any further than may be actually necessary for the building and repairing of fences, and for the family of the occupant, he or she shall be liable, in a civil action, for the recovery of the amount of damages done to the land.

3834. All civil officers, upon information or oath, or of their own knowledge shall cause any **person committing** any of the **offenses** mentioned in section seventeen of this act, to be brought before them by a like process as in criminal cases and to enter into recognizance for his appearance at the district court of the state, to be held in the county where said lands are located, on the first day of the next term thereof, and in default of such recognizance they shall commit such person to the jail of the county.

3835. The judges of the district court shall give the seventeenth section of this act [3832] in special charge to the **grand jury** at each term, who are required to especially inquire into and make presentment of all offenses committed against the provisions of the same.

3836. All **fines** and penalties accruing under the provisions of this act shall be paid into the county treasury by the officer collecting the same, who shall take duplicate receipts therefor, one of which he shall file in the office of the county clerk, and such funds shall be **apportioned** among the schools of the county where the same accrued, on the same basis as other money applicable to the support of schools are required by law to be apportioned.

3837. **All money** received as advance or full payment by the purchaser of land heretofore sold or hereafter sold under the provisions of this act, together with all the forfeitures arising under this act, shall be **paid** by the officers receiving said moneys **to the treasurer** of the state, specifying whether said money is for the common schools or university, normal school or agricultural college, and such money shall be held as the principal of the university, normal school, or agricultural college, or permanent school fund, as the case may be.

3838. The **appraisers** of all land under this act shall be **allowed** the sum of three dollars per day for their services and five cents per mile for each mile necessarily traveled and three dollars per day for one team for their use, and in all cases where it becomes necessary to have a survey made in order to find the corners and lines of the land to be appraised, the said appraisers are hereby authorized to employ a competent surveyor to accompany them for that purpose, who shall receive for his service five dollars per day and five cents per mile for each mile necessarily traveled. The publisher of any advertisement for the sale of lands shall be allowed the fees fixed by law for publishing legal advertisements. The commissioner of public lands and buildings shall be reimbursed his actual traveling expenses incurred, not exceeding five cents per mile in making sale of lands. All accounts for any such services shall be examined and approved as provided by law; and said accounts shall be audited by the board of educational lands and funds, and paid by warrants drawn upon the appropriation placed at their disposal. *County treasurers shall be allowed as compensation for the collection of all educational land funds one per cent of all such funds collected by them, and the auditor of public accounts is hereby authorized and required to issue warrants in payment thereof at the time and in the same manner as provided by law for the payment of county treasurers' fees for the collection of state taxes.

Amended and all after * added 1887, p. 619.

3839. The **board** for the sale, management, and leasing of lands under the provisions of this act shall **meet** on the second Tuesday of each month; the governor shall be chairman, and the commissioner secretary of the board. They shall keep a **record** of all proceedings and orders made by them. No order shall be made except upon the concurrence of at least three members of said board.

3840. The said board shall at their regular meetings make the necessary orders for the **investment of** the principal of the **fund** derived from the sale of said lands then in the treasury, but none of said funds shall be invested or loaned except on United States or state securities and registered county bonds; **Provided*, That when any state warrant issued in pursuance of an appropriation made by the legislature, and secured by the levy of a tax for its payment, shall be presented to the state treasurer for payment, and there shall not be money in the proper fund to pay said warrant, the state treasurer shall pay the amount due on said warrant from any funds in the state treasury belonging to the permanent school fund, and shall hold said warrant as an investment of said permanent school fund, and shall stamp and sign said warrant as provided in section eleven (11) of article two (2) of chapter eighty (80) of the Compiled Statutes of 1887 [4299].

All after * added 1891, p. 339. May be invested in United States three per cent bonds. These bonds cannot be converted into other securities. **15**, 686.

3841. The provisions of this act in relation of the **payments of interest** upon the purchase money of any lands sold as herein provided, shall apply to all future payments of interest upon sales of lands heretofore made in this state, and the said board shall, in their entries made under section six of this act, compute interest due accordingly.

3842. Any portion of the **lands** of this state governed by this act adjoining the site of any city or town may be **subdivided** into lots and sold as herein provided The board being satisfied that by a division of any such tract into lots the sale of the same can be made for a greater amount than if sold in tracts of forty acres as herein provided, shall have the authority to employ the necessary surveyors, and cause such tracks to be subdivided into lots and tracks of such size as they may determine, and a plat of the same shall be made and filed for record in the office of the county clerk. Tracts of land so subdivided shall **not** be **leased,** but each lot situated therein shall be sold at public aution at such time as the board shall direct, and sold as other lands are sold; such lots shall be appraised by the appraisers to be appointed by the board, none of whom shall be occupants of the land so sold. The commissioner of public lands and buildings shall give thirty days' notice of such sale, and publish the same in three newspapers of general circulation throughout the state, one of which shall be published in that county, and if no newspaper is published therein, notices of such sale shall be posted in five of the most public places in the county. Each notice shall contain a list of the land to be sold, and the appraised value of each. The sale of such lots shall take place on the day appointed under the direction of the commissioner, and the same shall be sold to the highest bidder, but in no case for less than the appraised value. Lots remaining unsold shall be again offered for sale at public auction, at such time as the board shall direct; *Provided,* That the said commissioner may adjourn the sales from day to day until all the lots be offered.

3843. The **expenses** attending such sale shall be paid as other expenses of sale of school land as hereinbefore provided.

3844. The **auditor** of public accounts shall **charge** each of the county **treasurers** in the state the amount of money received as principal and interest, separately from the sale or lease of lands in their respective counties, as shown by the receipts forwarded by the clerks of the several counties, and upon payment of the same to the state treasurer, and the presentation of the state treasurer's receipt, shall credit the several county treasurers with the amount of the same.

3845. School **lands** sold under the provisions of this act, or such as have been heretofore sold, shall **not** be **taxed** until the right to a deed shall have become absolute, **except** for the value of the interest of such purchaser, which interest shall be determined by the amount paid and the amount invested in **improvements** on such land; **Provided,* That when such land shall be situated within the limits of any city or village and shall have been subdivided into lots, then, and in such case, the same shall be subject to all special assessments for sidewalk, grading, paving, guttering, curbing, sewerage, and all other municipal improvements, in the same manner as other lots and lands in such city or village, except that a sale of such school lots to collect such assessment or assessments shall only pass the interest or title of the purchaser from the state, his heirs or assigns, and his or their right to a conveyance of the same, upon the payment of any balance of the purchase price and interest.

All after * added 1889, p. 557.

3846. Any **school district** in which there may be any school or other land belonging to the state subject to disposition under this act, is hereby empowered to **purchase from** the **state** any portion of such **land,** not exceeding forty acres, for school purposes, at not less than seven dollars per acre, nor less than the appraised value, such appraisement to be made in the same manner as provided for in section three of this act.

3847. Any church or cemetery association or corporation having control of a cemetery in a school district where there is any such land may purchase from the state any portion of said lands, not exceeding ten acres, for church or cemetery purposes, at not less than the price at which said lands may be purchased by individuals under the provisions of this act.

3848. [Same.]—In the event of there being a school house, cemetery, or church located upon any such land which has been or may hereafter be sold to any individual, corporation, or parties, such school district or school officers thereof, church or association, with the consent of the purchaser or occupant, in writing, may purchase land for the purposes specified in section thirty-one [3846], and obtain a deed from the state at the price the purchaser or occupant is to pay, and the sum so paid for the tract obtained for such special purpose shall be deducted from the price the original purchaser was to pay.

3849. Sales of land made for the special purposes contemplated in section thirty-one shall be the same as provided for in section six of this act, on the terms provided, and if there be buildings on such lands belonging to the state, such buildings shall be appraised separately.

Secs. 3850 to 3852. "An act to extend the time for the payment of notes given in payment for school lands." 1877, p. 210. In force June 1.

3850. That upon the full payment of all the interest and taxes due thereon, the principal of all notes given in payment for school lands be, and the same is hereby, extended to the first day of January, 1890; *Provided*, That upon all lands heretofore sold, the purchaser, or his assigns, shall make satisfactory proof to the county clerk of the county within which the land is situated, that permanent improvements have been made upon said lands before such extension shall be granted; *Provided further*, That nothing in this act shall be construed to prevent the purchaser, or his assigns, from making full payment of such notes at any time by computing the interest to the first day of January following such payment.

The purchaser must show good faith. Cannot claim the right to pay up when in default fifteen years. 25, 420 (41 N. W., 282).

3851. It shall be the duty of the county commissioners, upon application being made by the purchaser, or his assigns, showing that the provisions of section one of this act have been complied with, to extend the time of payment of the principal of such notes to the time specified in section one of this act.

3852. The provisions of this act shall extend to and include all sales of school land hereafter made.

Sec. 3853. "An act to amend an act entitled 'An act for the relief of purchasers of school lands,' approved February 19, A. D. 1877." 1879, p. 80. In force June 1.

3853. That any person who has purchased any of the school lands of this state, who may desire to surrender portions, and retain other portions, not less than forty acres of the same, shall, upon executing a release in writing to the state of Nebraska for such lands surrendered, be credited by the county treasurer of the county upon the portion of land retained by such person, the amount of money paid upon such lands so surrendered which shall exceed six per cent per annum of the unpaid portion of the purchase price of said lands.

Sec. 3854. "An act authorizing parties living on school lands selected in lieu of sections 16 and 36 to purchase the same when the state acquires title." 1875, p. 123. In force February 25.

3854. Any person or persons who shall have resided continuously for a term of five years on lands selected in lieu of sections 16 and 33 for common school purposes shall, when the state acquires title thereto, have the privilege of purchasing the same, on the same terms as other school lands are purchased from the state; *Provided*, That such lands shall be appraised under direction of the county commissioners, at not less than seven dollars per acre; *Provided further*, That such appraisal shall not include any improvements placed on said lands by the person so purchasing the same.

Sec. 3855. "An act to provide for the **measure of damages** in cases where proceedings are instituted to prevent the sale of school lands." 1875, p. 123. In force February 25.

3855. That hereafter, when any person, or persons, shall institute proceedings to prevent the sale of any of the school lands of this state, the judge, or other person, before whom the preceedings shall be commenced, shall require the person instituting such proceeding to enter into a written undertaking with one or more good and sufficient sureties thereto, to the state of Nebraska, in a sum equal at least to fifteen per centum of the value of the lands, the sale of which is sought to be prevented, conditioned that the plaintiff or person instituting such proceedings shall pay all costs and damages which may accrue, if it shall finally be determined that such proceedings ought not to have been instituted.

MISCELLANEOUS PROVISIONS.

Secs. 3856 to 3859. "An act to regulate **escheats**." 1875, p. 51. In force February 25.

3856. That the state **treasurer** is hereby authorized and required to **sell** and dispose at public auction all the right, title, and interest of the state to any lands which have escheated to the former territory of Nebraska or the state of Nebraska for want of heirs.

3857. Upon the failure of heirs the **title** shall **vest** at once **in** the **state**, without an inquest or other proceedings in the nature of office found.

3858. The state treasurer, before making any such **sale**, shall cause public **notice** to be given for at least four weeks before the time fixed for such sale of the time and place of making the same, which said notice shall be by publication in not less than one newspaper published in the county where the land lies; or, if no newspaper be published in said county, by publication in two of the papers printed at the seat of government.

3859. Upon the sale of said lands, the treasurer shall make out a certificate to the purchaser or purchasers, stating the price of the same, and the county where the same lie, giving a particular description of the same, when and where sold, and the **governor** of the state, upon the presentation of said certificate, shall, as governor of the state, **execute** to such purchaser or purchasers, his or her assignee or assignees, a **deed** for the land described in said certificate; and the secretary of state shall countersign the said deed, and affix the great seal of the state to the same; and the said deed so executed as aforesaid shall vest in the grantee or grantees, his or her heirs or assigns, all the title of the state of Nebraska in and to the said lands; and the said grantee shall have the same right of action in the name of the state of Nebraska as the state would have had without said sale and conveyance.

Secs. 3860 to 3866. "An act to **provide for** a state **cemetery** at Lincoln." 1869, p. 250. In force February 15.

3860. That eighty acres of **land** belonging to the state of Nebraska, to be selected as hereinafter provided, be and the same are hereby set apart **for** the uses and purposes of a **state cemetery** at or near Lincoln, the capital of the state.

3861. That at the election of city officers of said city of Lincoln, occurring next after the passage of this act, the qualified voters of said city shall elect three **trustees**, to be known as "trustees of the state cemetery," one of whom shall hold his office for one year, one for two years, and one for three years, the term of service of each respectively to be decided by lot, so that one of said trustees shall be elected annually by the qualified voters aforesaid at each annual election for city officers of said city thereafter occurring. Said trustees shall be a body corporate, with power to sue and be sued, contract and be contracted with, and acquire, and hold, or convey property, real or personal, for all purposes consistent with the provisions of this act.

3862. That within sixty days from the passage of this act, said **trustees** shall **select,** subject to the approval of the governor, a **site** for said cemetery, not more than three miles distant from the state capitol building, which said site, when so selected as aforesaid, shall be conveyed by the governor to said trustees, to be held, used, and controlled by them for the benefit of the state, and for the uses and purposes herein set forth.

3863. Said trustees shall cause the said **lands** to be laid off and **platted** by a competent surveyor, to be then selected, and shall set apart, in suitable subdivisions, not less than fifty acres of said cemetery, to be devoted as burial places for the inmates of the various benevolent or other public institutions of the state, which are or may hereafter be located at Lincoln. The residue of said cemetery, not exceeding thirty acres, shall be set apart as a burial ground for the uses and purposes of the citizens of Lincoln, and shall be subdivided and platted by said trustees, and sold in lots of suitable size, and upon such terms and at such prices as said trustees may prescribe, to citizens of Lincoln, the proceeds of such lots to be devoted, under the direction of said trustees, to the improvement and ornamentation of the grounds, and for such other purposes, consistent with the provisions of this act, as they may determine.

3864. That eighty acres of **land** belonging to the state, **in addition** to the cemetery site, herein provided for, to be selected by the governor, shall be **sold** at public or private sale, as the governor may determine, the proceeds of said sale to be by the governor paid over to said trustees, to be by them expended in suitably enclosing and ornamenting with forest trees, evergreens, and shrubbery the cemetery grounds aforesaid.

3865. The said trustees shall have power to employ a **sexton** to take charge of said cemetery, and keep the same in good order and repair, and superintend the setting out of trees, and the care of the same, and perform such other duties as said trustees shall prescribe, and they shall pay to said sexton such salary, out of the proceeds of the sale of the lots or lands herein provided for, as they shall deem just and reasonable.

3866. Said **trustees** shall have **power** to prescribe all needful rules and regulations for the government of said cemetery grounds, and for the burial of the dead from the various public institutions of the state, in the subdivision set apart by them for that purpose, and to do and perform such other duties, consistent with the objects herein contemplated, as they shall deem necessary for the good government of the same.

SECS. 3867 to 3870. "An act granting the **consent** of the state of Nebraska **to the purchase** or condemnation by the United States of a block of ground in Omaha for the purpose of the erection of a postoffice, or postoffice and court house, at Omaha, and ceding jurisdiction thereof to the United States." 1889, p. 494. In force March 21.

3867. That the **consent of** the **state** of Nebraska is hereby given **to the purchase** or condemnation by the United States of such land in the city of Omaha, Douglas county, Nebraska, not exceeding one block in extent, as may hereafter be selected by the United States, as a site for a postoffice, or postoffice and court house.

3868. The **jurisdiction** of the state of Nebraska, in and over the land mentioned in the preceding section when purchased or condemned by the United States, shall be and the same is hereby **ceded** to the United States; *Provided*, That the jurisdiction hereby ceded shall continue no longer than the said United States shall own or occupy the said land.

3869. The said consent is given and the said jurisdiction ceded upon the express **condition** that the state of Nebraska shall retain concurrent jurisdiction with the United States in and over the said land, so far as that all civil process in all cases, and such criminal or other process as may issue under the laws or authority of the state of Nebraska against any person or persons charged with crimes or misdemeanors committed within said state, may be executed therein in the same way and manner as if such consent had not been given, or jurisdiction ceded, except so far as such process may affect the real and personal property of the United States.

3870. The **jurisdiction** hereby ceded shall **not vest until** the United States shall have acquired the title to the said lands by purchase, grant, or condemnation, and so long as the said land shall remain the property of the United States, when acquired as aforesaid, and no longer, the same shall be and continue exonerated from all taxes, assessments, and other charges which may be levied or imposed under the authority of the state.

Secs. 3871 to 3874. "An act granting the **consent** of the state of Nebraska **to the purchase** or condemnation by the United States, **of a block** of ground in any city of the state of Nebraska for the purpose of the erection of a postoffice, or postoffice and court house, and ceding jurisdiction thereof to the United States." 1889, p. 498. In force June 30.

3871. That the **consent of** the **state** of Nebraska is hereby given **to** the **purchase** or condemnation by the United States of such land in any city in the state of Nebraska, not exceeding one block in extent, as may hereafter be selected by the United States, as a site for a postoffice, or postoffice and court house.

3872. The **jurisdiction** of the state of Nebraska in and over the land mentioned in the preceding section, when purchased or condemned by the United States, shall be and the same hereby is **ceded** to the United States; *Provided*, That the jurisdiction hereby ceded shall continue no longer than the said United States shall own or occupy the said land.

3873. The said consent is given and the said jurisdiction ceded upon the express **condition** that the state of Nebraska shall retain concurrent jurisdiction with the United States in and over the said land, so far as that all civil process in all cases, and such criminal or other process as may issue under the laws or authority of the state of Nebraska against any person or persons charged with crimes or misdemeanors committed within said state, may be executed therein in the same way and manner as if such consent had not been given, or jurisdiction ceded, except so far as such process may affect the real and personal property of the United States.

3874. The **jurisdiction** hereby ceded shall **not vest until** the United States shall have acquired the title to the said lands by purchase, grant, or condemnation, and so long as the said land shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exonerated from all taxes, assessments, and other charges which may be levied or imposed under the authority of this state.

Secs. 3875 and 3876. "An act **ceding jurisdiction** of the state of Nebraska to the United States over the military reservation known as Fort Sidney." 1889, p. 501. In force March 30.

3875. That the **jurisdiction** of the state of Nebraska in and over the military reservation known as Fort Sidney be and the same is hereby **ceded** to the United States; *Provided*, That the jurisdiction hereby ceded shall continue no longer than the United States shall own and occupy said military reservation; *Provided further*, That nothing in this act shall be so construed as to prevent the enforcement on said military reservation of the laws of this state relating to the regulation, license, and sale of intoxicating liquors by the state of Nebraska.

3876. The said jurisdiction is ceded upon the express **condition** that the state of Nebraska shall retain concurrent jurisdiction with the United States in and over the said military reservation so far as that all civil process in all cases, and such criminal or other process, may issue under the laws or authority of the state of Nebraska against any person or persons charged with crime or misdemeanors committed within said state may be executed therein in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real and personal property of the United States; *Provided*, That nothing in the foregoing act shall be construed so as to prevent the opening and keeping in repair public roads and highways across and over said reservation.

Secs. 3877 to 3879. "An act **ceding jurisdiction** to the United States over the military reservations known as Fort Niobrara and Fort Robinson." 1887, p. 628. In force March 29.

3877. That the **jurisdiction** of the state of Nebraska in and over the reservations known as Fort Niobrara and Fort Robinson be and the same are hereby **ceded** to the United States; *Provided*, That the jurisdiction hereby ceded to the United States shall continue no longer than the United States shall own or occupy said military reservations; **Provided further*, That nothing in this act shall exempt any property within the limits of said military reservations belonging to any civilian therein from assessment, levy, and collection of tax which would otherwise be subject to taxation within Nebraska, except the personal property of the officers and enlisted men in the service of the United States who may be stationed on said military reservations, the said personal property being owned by said officers and enlisted men for their comfort and convenience. Nor shall any of the provisions of this act in any way interfere with any proper officer of the state of Nebraska in entering upon said reservations for the purpose of assessment or collecting any taxes due said state. Nor shall any of the provisions of this act prevent the enforcement on said military reservations of chapter fifty (50) of the Compiled Statutes relating to the license and sale of intoxicating liquors [ch. 30, secs. 2173 to 2207].

All after * added 1889, p. 499.

3878. That **section** 10, article 13, chapter 83, as now existing, is hereby **repealed** and this section substituted in its stead; *Provided*, That all suits pending and all rights acquired under section hereby repealed shall be saved the same as though said section had continued in force.

This section added 1889, p. 500.

3879. The said jurisdiction is ceded upon the express **condition** that the state of Nebraska shall retain **concurrent jurisdiction** with the United States in and over the said military reservations, so far as that all civil process in all cases, and such criminal or other process, may issue under the laws or authority of the state of Nebraska against any person or persons charged with crimes or misdemeanors committed within said state may be executed therein in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real and personal property of the United States; *Provided*, that nothing in the foregoing act shall be construed so as to prevent the opening and keeping in repair public roads and highways across and over said reservation.

Secs. 3880 to 3884. "An act granting the **consent** of the state of Nebraska to the **purchase of lands by the United States** within its boundaries for the erection thereon of buildings for the accommodation of the United States circuit and district courts, postoffices, land offices, mints, or other government buildings, and ceding jurisdiction over said lands to the United States, and to provide for the punishment of willful, reckless, or voluntary injury to or mutilation of such grounds, buildings, or appurtenances." 1883, p. 335. In force February 22.

3880. That the **consent of** the **state** of Nebraska is hereby granted to the

United States of America to purchase such grounds as may be deemed necessary, in the city of Nebraska City, Nebraska, or any other city or incorporated town in the state of Nebraska, for the erection thereon of buildings for the accommodation of the United States circuit and district courts, postoffice, land office, mints, or any other government office, and also for the purchase by the United States of such other lands within the state of Nebraska as the agents or authorities of the United States may from time to time to select for the erection thereon of forts, magazines, arsenals, and other needful buildings.

3881. The **jurisdiction** of the state of Nebraska in and over the lands mentioned in the preceding section shall be and the same is hereby **ceded** to the United States; *Provided,* That the jurisdiction hereby ceded shall continue no longer than the United States shall own or occupy said lands.

3882. The said consent is hereby given, and the said jurisdiction ceded upon the express condition that the state of Nebraska shall retain **concurrent jurisdiction** with the united States in and over the said lands, so far as that all civil process in all cases, and such criminal or other process as may issue under the laws or authority of the state of Nebraska, against any person or persons charged with crime or misdemeanors committed within said state, may be executed therein, in the same way and manner as if such consent had not been given or jurisdiction ceded, except so far as such process may affect the real and personal property of the United States.

3883. The **jurisdiction** hereby ceded shall **not vest until** the United States shall have acquired the title to said lands by purchase or grant; and so long as the said lands shall remain the property of the United States, when acquired as aforesaid, and no longer, the same shall be and continue exonerated and exempt from all taxes, assessments, and other charges which may be levied or imposed under the authority of the laws of this state.

3884. It is further enacted that any **malicious,** willful, reckless, or voluntary **injury to** or mutilation of the **grounds,** buildings, or appurtenances shall subject the offender to a fine of not less than twenty dollars nor more than one hundred dollars, to which may be added for an aggravated offense imprisonment not exceeding six months in the county jail, to be prosecuted as other criminal cases are prosecuted before any court of competent jurisdiction.

Secs. 3885 to 3888. "An act granting the consent of the state of Nebraska to the purchase or condemnation by the United States of a tract of land in Sarpy, Washington, or Douglas counties, for a military post and reservation, and ceding jurisdiction thereof to the United States." 1889, p. 496. In force March 30.

3885. That the **consent of** the state of Nebraska is hereby given **to the purchase** or condemnation by the United States, of such land in Sarpy, Washington, or Douglas county Nebraska, not exceding one thousand acres in extent, as may hereafter be selected by the United States, as a site for a military post and reservation.

3886. The **jurisdiction** of the state of Nebraska in and over the land mentioned in the preceding section, when purchased or condemned by the United States shall be, and the same hereby is **ceded** to the United States; *Provided,* That the jurisdiction hereby ceded shall continue no longer than the said United States shall own or occupy the said land.

3887. The said consent is given and the said jurisdiction ceded upon the express **condition** that the state of Nebraska shall retain concurrent jurisdiction with the United States in and over the said land, so far as that all civil process in all cases, and such criminal or other process as may issue under the laws or authority of the state of Nebraska against any person or persons charged with crimes or misdemeanors committed within said state, may be executed therein in the same way and manner as if such consent had not been given, or jurisdiction ceded, except so far as such process may affect the real and personal property of the United States.

3888. The **jurisdiction** hereby ceded shall **not vest until** the United States shall have acquired the title to the said lands by purchase, grant, or condemnation, and so long as the said land shall remain the property of the United States when acquired as aforesaid and no longer, the same shall be and continue exonerated from all taxes, assessments, and other charges which may be levied or imposed under the authority of the state.

PUBLIC BUILDINGS.

Secs. 3889 to 3893. "An act to provide for the **location** of the seat of government of the state of Nebraska and for the erection of public buildings thereat." 1867, p. 52. In force June 14*.

3889. That the governor, secretary of state, and the auditor be and they are hereby appointed **commissioners** for the purpose of locating the seat of government and the public buildings of the state of Nebraska.

3890. On or before the fifteenth day of July, A. D. 1867, the commissioners, or a majority of them, shall upon actual view **select** from the **lands** belonging to the state, within the following limits, to-wit: The county of Seward, the south half of the counties of Saunders and Butler, and that portion of the county of Lancaster lying north of the south line of township nine, a suitable site of not less than six hundred and forty-acres, lying in one body for a **town,** due regard being had to its accessibility from all portions of the state, and its general fitness for a capital. They shall then appoint a suitable person as surveyor, and such other assistants as may be necessary, who shall take and subscribe an oath similar to the one taken by the commissioners. They shall immediately survey, lay off, and stake out the said tract of land into lots, blocks, streets, and alleys, and public squares, or reservations for public buildings, which said town, when so laid out and **surveyed,** shall be **named** and known as Lincoln, and the same is hereby declared to be the permanent seat of government of the state of Nebraska, at which all of the public offices of the state shall be kept, and at which all the sessions of the legislature shall hereafter be held.

As to dedication to "State Historical Association," see **14,** 337 (15 N. W., 717).

3891. The state **university** and state **agricultural college** shall be united as one educational institution, and shall be **located** upon a reservation selected by said commissioners in said "Lincoln," and the necessary buildings shall be erected thereon as soon as funds can be secured by the sale of lands donated to the state for that purpose, or from other sources.

3892. The **penitentiary** of the state shall be **located** upon a reservation selected by the said commissioners in the said "Lincoln," or upon lands belonging to the state, and adjacent to said town of "Lincoln," and the necessary building shall be erected as soon as funds can be secured.

3893. As soon as the capitol building provided for in this act is erected and completed, it shall be the duty of the governor to issue his proclamation announcing said fact, and thereupon it shall be the duty of all the state **officers** whose offices are properly kept at the capitol, to **remove,** within three months, their several offices, together with the public property, archives, records, books, and papers **to** said **"Lincoln,"** and all sessions of the legislature shall thereafter be convened at the same place.

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*Secs. 2, 4-10, and 14 of original act, being temporary in their application, are here omitted, as are also certain acts providing for erection of buildings, sale of state lots, correction of orignal plat, etc.

Secs. 3894 to 3896. "An act to provide for the care of the capitol building and other state property." 1869, p. 87. In force February 15.

3894. That the **governor** be and is hereby authorized and empowered to **insure** the **public buildings** and other property belonging to the state, liable to destruction or injury by fire, with some good and responsible insurance company or companies, for the benefit of and in the name of the state.

3895. That the governor shall deposit the insurance policies, taken out in accordance with the provisions of the foregoing section, with the treasurer of the state, and shall certify to the auditor the amount of the **premiums** and the date they become due, and the auditor shall draw his warrant upon the treasurer for the respective amounts of said premiums from time to time as they shall become due, in favor of the proper officer or agent of said insurance company or companies.

3896. The governor is hereby authorized and empowered to employ some suitable person as **janitor of** the **capitol** building, who shall receive a salary of six hundred dollars per annum, payable quarterly, in like manner as the salaries of state officers, and whose duty shall be to take care and keep in good order the said capitol building and the grounds belonging thereto.

CHAPTER 46.—PUBLIC FINANCES.

I. TAXATION.

Secs. 3897 to 4082, except secs. 3937, 3938, and 3969. "An act to provide a system of revenue." 1879, p. 276. In force September 1. (Repealing act of 1869, p. 179.)

3897. The **property** named in this section shall be assessed and **taxed**, except so much thereof as may be in this chapter exempted: *First*—All real and personal property in this state. *Second*—All moneys, credits, bonds, or stocks, and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property *in transitu* to or from this state, used, held, owned, or controlled by persons residing in this state. *Third*—The shares of capital stock of banks and banking companies doing business in this state. *Fourth*—The capital stock of companies and associations incorporated under the laws of this state.

Grant to railroads not exempt. 5, 397. Homestead liable for taxes from the time occupant entitled to patent. 5, 400; 3, 17; 5, 393. City cannot by ordinance, exempt property from taxation. 12, 94 (10 N. W., 568). Assessment essential to validity of tax, but a formal assessment, although not made in mode contemplated by law, if not inequitable, will support a levy otherwise legal. 11, 344 (7 N. W., 859.)

3898. The following **property** shall **be exempt** from taxation in this state: *First*—The property of the state, counties, and municipal corporations, both real and personal. *Second*—Such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery, and charitable purposes; *Provided*, That in the assessment of real estate, incumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property; *Provided further*, That the increased value of lands by reason of live fences, fruit, and forest trees, grown and cultivated thereon, shall not be taken into account in the assessment thereof.

All property in this state taxed whether in hand of owner or agent. **19**, 54 (26 N. W., 589). Definition of "school," place of learning. Property exempt from taxation while used for school purposes. **22**, 453 (35 N. W., 222).

3899. **School lands** sold under any provisions of any law of this state, or such as have been heretofore sold, shall not be taxable until the right to a deed shall have become absolute, except the value of the interest of such purchasers shall be taxable, which interest shall be determined by the amount paid and invested in **improvements** on such lands; *Provided*, That the increased value of such improvements by reason of live fences, fruit and forest trees, grown and cultivated on such lands shall not be taken into account in assessing the value of such improvements.

3900. **Personal property** shall be valued as follows: *First*—All personal property, except as herein otherwise directed, shall be valued at its fair cash value. *Second*—Every credit for a certain sum, payable either in money or labor, shall be **valued** at a **fair cash value** for the sum so payable; if for any article of property, or for labor, or service of any kind, it shall be valued at the current price of such property, labor, or service. *Third*—Annuities and royalties shall be valued at their then present total value.

Owners of shares in national banks may deduct debts from valuation. **25**, 472 (41 N. W., 356).

3901. **Real property** shall be **valued** as follows: *First*—Each tract or lot of real property shall be valued at its fair value, estimated at the price it would bring at a voluntary sale thereof, where public notice had been given, and a payment of one-third cash and the balance secured by a mortgage upon the property. [*Second*]—Leasehold estates, including leases of school and other lands of the state, shall be valued at such a price as they would bring at a fair voluntary sale for cash. *Third*—Where a building or structure owned by a lessee is located on land leased from another, the same shall be valued at such a price as such building or structure would sell at a fair voluntary sale for cash.

3902. **Personal property** shall be **listed** between the first day of April and the first day of June of each year, **when** required by the assessor, with reference to the quantity held or owned on the first day of April in the year for which the property is required to be listed. Personal property purchased or acquired on the first day of April shall be listed by or for the person purchasing or acquiring it.

3903. **Personal property** shall be **listed** in the **manner** following: *First*—Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds, or stocks, shares of stock of joint or other companies (when the capital stock of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties, and other personal property. *Second*—He shall also list all moneys and other personal property invested, loaned, or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company, or corporation whatsoever, and all moneys deposited subject to his order, check, or draft, and credits due from or owing by any person or persons, body corporate or politic, whether in or out of the county. *Third*—The property of a minor child shall be listed by his guardian; if he have no guardian, then by the father, if living; if not, by the mother, if living; and if neither father nor mother be living, by the person having such property in charge. *Fourth*—The property of any other person under guardianship, by his guardian; or if he has no guardian, by the person having charge of such property. *Fifth*—The property of a wife, by her husband, if of sound mind; if not by herself. *Sixth*—The property of a person for whose benefit it is held in trust, by the trustee of the estate of a deceased person, by the executor or administrator. *Seventh*—The property of corporations whose assets are in the hands of receivers, by such receivers. *Eighth*—The property of a body politic or corporate, by the president or proper agent or officer thereof. *Ninth*—The property of a firm or company, by a partner or agent thereof. *Tenth*—The property of manufacturers and others in the hands of agent, by and in the name of such agent, as merchandise.

3904. **Personal property,** except such as is required in this chapter to be **listed** and assessed otherwise, shall be listed and assessed in the county, precinct, township, city, or village **where** the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county, precinct, township, city, or village where the principal office or place of business of such corporation or person is located in this state. If there be no principal office or place of business in this state, then at the place in this state where any such corporation or person transacts business.

3905. When the owner of live stock or other personal **property connected with a farm** does not reside thereon, the same shall be listed and assessed in the county, township, or precinct where the farm is situated; *Provided,* If the farm is situated in several townships or precincts, it shall be listed and assessed in the township or precinct in which the principal place of business on such farm shall be.

Cited, 24, 354 (38 N. W., 735.

3906. **Live stock in herds** or not connected with a farm shall be listed or assessed in the county where such live stock may be on the first day of April of the year for which the property is required to be listed. For the purposes of assessment and taxation the live stock mentioned in this section shall be deemed to be at the place where the owner or keeper thereof shall have his ranch, provided such ranch shall be in this state.

3907. The **property** of manufacturers and others, **in** the **hands of agents,** shall be listed and assessed at the place where the business of such agent is carried on.

3908. When **real estate** is exempt in the hands of the holder of the fee, and the same is **contracted to be sold,** the amount paid thereon by the purchaser, with the enhanced value of the investment and improvement thereon until the fee is conveyed, shall be held to be personal property and listed and assessed as such, in the place where the land is situated.

3909. Personal **property,** *in transitu,* shall be listed and assessed in the county, township, city, or village where the owner resides; *Provided,* If it is intended for a business it shall be listed and assessed at the place where the property of such business is required to be listed.

3910. The **stock of nurseries,** growing or otherwise, in the hands of nurserymen shall be listed and assessed as merchandise.

3911. The **personal property of gas companies,** except the pipes laid down, shall be listed and assessed in the town, village, district, or city where the principal works are located. Gas mains and pipes laid in roads, streets, or alleys, shall be held to be personal property, and listed and assessed as such in the town, district, village or city where the same are laid.

3912. The horses, stages, and other **personal property of stage companies,** or persons operating stage lines, shall be listed and assessed in the county, town, city, or district, where they are usually kept.

3913. The **personal property of** express or **transportation companies** shall be listed and assessed in the county, township, precinct, city, or village where the same is usually kept.

3914. Persons required to **list** property **on behalf of others** shall list it in the same place in which they are required to list their own; but they shall list it separately from their own, specifying in each case the name of the person, estate, company, or corporation to whom it belongs.

3915. The **owner** of personal property **removing** from one county, town, city, village, or district to another, between the first day of April and the first day of June, shall be assessed in either, in which he is first called upon by the assessor. The owner of **personal property** moving into this state from another state, between the first day of April and the first day of June, shall list the property owned by him on the first day of April of such year, in the county, township, city, village, or precinct **where** he resides; *Provided,* If such person has been **assessed,** and can make it appear to the assessor that he is held for tax of the current year on the property, in another state, county, township, precinct, city, or village, he shall not be assessed again for said year.

3916. In all questions that may arise under this chapter, as to the proper **place to list** personal property, or when the same cannot be listed as stated in this chapter, if between several places in the same county, the place for listing and assessing shall be **determined** and fixed by the county board; and when between different counties, or places in different counties, by the auditor of public accounts; and when fixed in either case, shall be as binding as if fixed in this chapter.

3917. Persons required to list personal property shall make out and deliver to the assessor, at the time required, a **schedule of** the numbers, amounts, quantity, and quality of all **personal property** in their possession, or under their control, required to be listed for taxation by them. It shall be the duty of the assessor to determine and fix the fair cash value of all items of personal property.

Description sufficient if it can be ascertained clearly from it the property intended to be taxed. Oath of assessor should be attached to schedule. **9,** 374 (2 N. W., 732). Values fixed by assessor conclusive. His act is judicial. **13,** 24 (12 N. W., 832).

3918. The **schedule** shall be signed and sworn to by the person making it, and the **oath** shall be administered either by the assessor or by any other officer authorized to administer oaths, and shall be certified to by him, and the oath shall be printed upon the blank form, and shall be in substance as follows: "I (A. B.), do solemnly swear or affirm that I have listed above (or within) all personal property, moneys, and credits, subject by the law to taxation, and owned by me, or required by law to be listed by me for any other person or persons (insert as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor, as the case may be), according to the best of my knowledge. (Signed) A. B. Subscribed in my presence, and sworn to before me this —— day of ——, 18—."

Oath of assessor a prerequisite and without which commissioners have no jurisdiction in taxation. **6,** 245. Oath is essential, and failure to make it renders the tax invalid; and the tax is not a lien that can be foreclosed on premises. **14,** 585 (16 N. W., 837). Tax may be just as **equitable** without the verification as with it. **11,** 344 (7 N. W., 859).

3919. Any assessor who shall return such **schedule** to the office of the county clerk, with his assessment roll, **without** the same **having been sworn to** as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than ten dollars nor more than fifty dollars.

3920. Such **schedule,** when completed by the assessor in extending in a separate column the value of such property, shall truly and distinctly **set forth:** *First*—The number of horses of all ages, and the value thereof. *Second*—The number of cattle of all ages, and the value thereof. *Third*—The number of mules and asses of all ages, and the value thereof. *Fourth*—The number of sheep of all ages, and the value thereof. *Fifth*—The number of hogs of all ages, and the value thereof. *Sixth*—Every steam engine, including boilers, and the value thereof. *Seventh*—Every fire and burglar-proof safe, and the value thereof. *Eighth*—Every billiard, pigeon-hole, bagatelle, or other similar table, and the value thereof. *Ninth*—Every carriage and wagon, of whatsoever kind, and the value thereof. *Tenth*—Every watch and clock, and the value thereof. *Eleventh*—Every sewing or knitting machine, and the value thereof. *Twelfth*—Every piano-forte, and the value thereof. *Thirteenth*—Every melodeon and organ, and the value thereof. *Fourteenth*—Every franchise, the description and the value thereof. *Fifteenth*—Every annuity and royalty, the description and the value thereof. *Sixteenth*—Every patent right, the description and the value thereof. *Seventeenth*—Every steamboat, sailing vessel, wharf boat, barge, or other water craft, and the value thereof. *Eighteenth*—The value of merchandise on hand. *Nineteenth*—The value of material and manufactured articles on hand. *Twentieth*—The value of manufacturers' tools, implements, and machinery (other than boilers and engines, which shall be listed as such). *Twenty-first*—The value of agricultural tools, and implements and machinery. *Twenty-second*—The value of gold or silver plate and plated ware. *Twenty-third*—The value of diamonds and jewelry. *Twenty-fourth*—The amount of moneys of bank, broker, or stock-jobber. *Twenty-fifth*—The amount of credits of bank, banker, broker, or stock-jobber. *Twenty-sixth*—

The amount of moneys other than of bank, banker, broker, or stock-jobber. *Twenty-seventh*—The amount of credits other than of bank, banker, broker, or stock-jobber. *Twenty-eighth*—The amount and value of bonds, stocks, and state, county, city, village, or school district warrants, and municipal securities of any kind whatever. *Twenty-ninth*—The amount and value of shares of capital stock of companies and associations not incorporated by the laws of this state, except shares of stock in national bank. *Thirtieth*—The value of property such person is required to list as a pawnbroker. *Thirty-first*—The value of property of companies and corporations other than property hereinafter enumerated. *Thirty-second*—The value of bridge property. *Thirty-third*—The value of property of saloons and eating houses. *Thirty-fourth*—The value of household or office furniture and property. *Thirty-fifth*—The value of investments in real estate, and improvements thereon, required to be listed under this chapter. *Thirty-sixth*—The value of all other property required to be listed.

3921. Whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company, or corporation, has not made a full, fair, and complete **schedule** of such property, he may examine such person under oath in regard to the amount of property he is required to schedule, and for that purpose he is authorized to administer oaths; and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such principal, according to his best judgment and information. If the person so examined shall swear falsely he shall be guilty of **perjury** and punished accordingly.

3922. Any person, firm, or corporation within this state required to list property for the purpose of taxation, and who claims that a portion of his or her funds are invested in **government bonds,** and therefore exempt from taxation, shall be required to exhibit to the assessor, to whom they are required to make returns of their such bonds, and the assessor shall enter upon such list the species of bond or bonds so exhibited, together with the number, series, and amount of each bond respectively. And every person claiming to be the owner of any such bond or bonds, and failing or refusing to so exhibit the same to the assessor for the purposes herein provided, shall not be entitled to any exemption on account of funds claimed to be invested in such government bonds, but shall have the aggregate amount so claimed to be so invested added to his list by the assessor as so much additional moneys and credits as herein provided.

Government bonds must be owned *bona fide* or they are not exempt from taxation. **10,** 154 (4 N. W., 946).

3923. In making up the amount of **credits** which any person is required to list for himself or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all *bona fide* **debts** owing by such person, company or corporation, to any other person, company, or corporation for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be **deducted** as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other **sureties** who are able to contribute, then only so much as the surety in whose behalf the statement is made will be bound to contribute; *Provided*, That nothing in this section shall be so construed as to apply to any bank, company, or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the value of any other item of taxation than credits.

Should deduct *bona fide* debts. **5,** 564. *Bona fide* debts may be deducted from amount of national bank stock. **25,** 469 (41 N. W., 356). When the owner of money makes a general deposit of it in a bank, it ceases to be his money and becomes a credit, and he may deduct the amount of his indebtedness therefrom. **14,** 149 (15 N. W., 337).

3924. **No** person, company, or corporation shall be entitled to any **deduction** from the amount of any bonds, stocks, or money loaned, or account of any bond, note, or obligatiation of any kind, given to any insurance company on account of premiums or policies, nor on account of any unpaid subscription to any religious, literary, scientific, or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated, and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds or other non-taxable property.

3925. In all cases where **deductions** are claimed from credits the assessor shall require that such deductions be verified by the **oath** of the person, officer, or agent claiming the same; and any such person, officer, or agent, knowingly or willfully making a **fraudulent statement** of such deductions claimed, so verified by affidavit, shall be liable to a **fine** of not less than $100, nor more than $1,000, in addition to all damages sustained by the state, county, or local corporation, to be recovered in any proper form of action in any court of competent jurisdiction, in the name of the state of Nebraska. Such fines, when recovered, shall be paid into the county treasury, and the damages, when collected, shall be paid to whom they belong. The assessor shall preserve the statement of deductions thus claimed, so verified by affidavit, and when he returns the assessment books, shall file the same with the county clerk, to be kept on file in his office for two years, and at the expiration of such time said statement of deductions shall be destroyed by said clerk, but in the meantime shall be subject only to the inspection of officers charged with the execution of this law.

3926. Every bank (not incorporated), **banker, broker,** or **stock jobber,** shall, at the time fixed by this chapter for listing personal property, make out and furnish the assessor a **sworn statement,** showing: *First*—The amount of property on hand or in transit. *Second*—The amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft. *Third*—The amount of checks, or other cash items, the amount thereof not being included in either of the preceding items. *Fourth*—The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid. *Fifth*—The amount of bonds and stocks of every kind, state and county warrants, and other municipal securities, and shares of capital stock of joint stock of other companies or corporations, held as an investment, or any way representing assets. *Sixth*—All other property appertaining to said business other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act). *Seventh*—The amount of deposits made with them by other parties. *Eighth*—The amount of all accounts payable, other than current deposit accounts. *Ninth*—The amount of bonds and other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item. The aggregate amount of the first, second, and third items in said statement shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this chapter. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the fourth item of said statement, and the amount of the remainder, if any, shall be listed as credits. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement, and the remainder shall be listed as bonds or stocks.

Banks are assessable on moneys on hand, in transit, or in the hands of correspondents, and no indebtedness can be deducted from the sum of these three items. 14, 149 (15 N. W., 337).

3927. Every person or company engaged in the business of receiving property in pledge, or as security for money or other thing advanced to the pawner or pledger, shall be held to be a **pawnbroker,** and shall, at the time required by this chapter, return, under oath, the value of all property pledged and held by him as a pawnbroker, on hand on the first day of April, annually, and taxes shall be charged upon the fair cash value of such property, to such pawnbroker, the same as other property.

3928. Bridge, express, ferry, gas, manufacturing, mining, savings bank, stage, steamboat, street railroad, transportation, and all other companies and **associations incorporated** under the laws of this state, except insurance companies, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a **sworn statement of** the amount of its **capital stock,** setting forth particularly: *First*—The name and location of the company or association. *Second*—The amount of capital stock authorized, and the number of shares into which such capital stock is divided. *Third*—The amount of capital stock paid up. *Fourth*—The market value, or if no market value then the actual value of the shares of stock. *Fifth*—The total amount of all indebtedness, except the indebtedness for current expenses—excluding from such expenses the amount paid for the purchase or improvement of property. *Sixth*—The assessed valuation of all its real and personal property (which real and personal property shall be listed and valued as other real and personal property is listed and assessed under this chapter). The aggregate amount of the fifth and sixth items shall be deducted from the aggregate value of its shares of stock, as provided by the fourth item, and the remainder, if any, shall be listed by the assessor in the name of such company or corporation as capital stock thereof. In all cases of failure or refusal of any person, officer, company, or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain.

3929. The stockholders in every **bank** located within this state, whether such bank has been organized under the laws of this state or of the United States, shall be assessed and taxed on the value of their **shares** of stock therein, in the county, town, precinct, village, or city where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. Such shares shall be listed and assessed with regard to the ownership and value thereof, as they existed on the first day of April, annually, subject, however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of this state, in the county, town, precinct, village, or city where such bank is located. The shares of capital stock of national banks not located in this state, held in this state, shall not be required to be listed under the provisions of this act.

3930. In each such bank there shall be kept at all times a full and correct **list of** the names and residences of its **stockholders,** and of the number of shares held by each; which list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the assessor to ascertain and report to the county clerk a correct list of the names and residences of all stockholders in any such bank, with the number and assessed value of all such shares held by each stockholder.

3931. The **county clerk,** to whom such returns are made, shall enter the **valuation of** such **shares** in the tax lists, in the names of the respective owners of the same, and shall compute and extend the taxes thereon the same as against the valuation of other property in the same locality.

3932. The collector of taxes, and the officer or officers authorized to receive taxes from the collector, may all, or either of them, have an action to **collect** the **tax** assessed **on** any **share** or shares of bank stock from the avails of the sale of such share or shares, and the tax against such share or shares shall be and remain a **lien** thereon till the payment of such tax.

3933. For the purposes of collecting such taxes, it shall be the duty of every such bank, or the managing officer or officers thereof, to **retain** so much of any dividend or **dividends** belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock, respectively, **until** it shall be made to appear to such bank or its officers that such **taxes** have been **paid;** and any officer of any such bank who shall pay over or authorize the paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the collector of taxes where said bank is located shall sell said share or shares to pay the same, like other personal property. And in case of sale the provision of law in regard to the transfer of stock, when sold on execution, shall apply to such sale.

3934. Each and every **insurance company** transacting business in this state shall be **taxed** upon the excess of premiums received over losses and ordinary expenses incurred within the state during the year previous to the year of listing in the county where the agent conducts the business, properly proportioned by the company at the same rate that all other personal property is taxed, and the agent shall render the list and be personally liable for the tax; and if he refuses to render the list, or to make affidavit that the same is correct, the amount may be assessed according to the best knowledge and discretion of the assessor. Insurance companies shall be subject to no other tax, fees, or licenses under the laws of this state, except taxes on real estate and the fees imposed by section 32 of an act regulating insurance companies, passed February 25, 1873 [412].

Former act read gross amount. Amended 1887, p. 569. Occupation tax may be levied by cities on. **25,** 85 (41 N. W., 140). Gross premiums taxable as personal property. **23,** 319 (36 N. W., 522).

3935. The president, secretary, superintendent, or other principal accounting officers within this state of every **railroad** or **telegraph company,** whether incorporated by any law of this state or not, when any portion of the property of said railroad or telegraph company is situated in more than one county, shall list and return to the auditor of public accounts for assessment and taxation, verified by the oath or affirmation of the person so **listing,** all the following described property belonging to such corporation on the first day of April of the year in which the assessment is made within this state, viz.: The number of miles of such railroad and telegraph line in each organized county in this state and the total number of miles in the state, including the road-bed, right of way, and superstructures thereon, main and side tracks, depot buildings and depot grounds section and tool houses, rolling stock, and personal property necessary for the construction, repairs, or successful operation of such railroad and telegraph lines; *Provided, however,* That all machine and repair shops, general office buildings, storehouses, and also all real and personal property, outside of said right of way and depot grounds as aforesaid, of and belonging to any such railroad and telegraph companies, shall be listed for purposes of taxation by the principal officers or agents of such companies, with the precinct assessors of any precinct of the county where said real or personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property.

Amended 1881, p. 317. Depot grounds actually used or kept for use in the expectation of a reasonable increase of business are only to be considered as adding value to the mileage. **15**, 254 (18 N. W., 71). Real estate not used in operating the road should be assessed by local assessor, also repair shops, but roundhouses by the state board. **26**, 668 (42 N. W., 879). A bridge over a navigable stream is not taxable by the state board. **25**, 348 (41 N. W., 246).

3936. The return to the auditor of public accounts herein provided shall be made on or before the fifth day of April annually. If the return aforesaid be not received by said auditor by the tenth day of April, he shall thereupon proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same correctly, and for that purpose may address a written communication to the **corporation** or to some officer of the corporation who has failed or refused to make the return aforesaid. As soon as practicable after the auditor has received the said return, or procured the information required to be set forth in said return, a meeting of the state board of equalization, consisting of the governor, state treasurer, and auditor, shall be held at the office of said auditor, and the said board shall then value and assess the property of said corporation at its actual value for each mile of said road or line, the value of each mile to be determined by dividing the sum of the whole valuation by the number of miles of such road or line. In making up such valuation or **assessment** the said board shall examine and consider the return herein required to be made, or the information procured by the auditor in default of such return, together with such other reliable information relative thereto as they may be able to procure; * said board shall not assess the value of any machine or repair shop or general office buildings, store houses, or any real or personal property situated outside of the right of way or depot grounds of such company.* On or before the fifteenth day of May, or so soon thereafter as the said board, or any two thereof, shall have made and determined said valuation and assessment, the auditor shall certify to the county clerks of the several counties in which the property of the aforesaid corporation, or any part thereof, may be situated, the assessment per mile so made on the property of such corporation, specifying the number of miles and amount in each of such counties. All such property shall, for the purpose of taxation, be deemed "personal property," and be placed on the **tax** list as hereinafter provided.

* to * added 1881, p. 318.

Secs. 3937 and 3938. "An act to tax **sleeping and dining cars.**" 1889, p. 536. In force March 23.

3937. It shall be the duty of all railroad companies within the state to **report to** the **auditor** of the state the number of sleeping cars and dining cars not owned by such corporations, but used by it in operating its railway in this state during each month in the year for which the return is made, and also the number of miles each month that such cars have been run or operated on such railways within this state, and the total number of miles that said cars have run and operated each month within and without the state, and the owner or owners of said cars.

3938. The state board of equalization shall, at the time of the **assessment** of railway property for taxation, assess for taxation, against the owner or owners of said cars, the average number of said cars used by said railway corporations each month, and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles that such cars have been run or operated within the state shall bear to the monthly average number of miles that said cars have been used or operated within and without the state, such valuation shall be in the same ratio as that of the property of individuals.

3939. If any person or corporation shall give a **false** or fraudulent list, **schedule**, or statement required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a **penalty** of not less than $10 nor more than $100, to be recovered in any proper form of action, in the name of the state of Nebraska, on the complaint of any person. Such fine, when collected, to be paid into the county treasury.

3940. Whoever shall willfully make a **false list**, schedule, or statement, under oath, shall, in addition to the penalty provided in the preceding section, be liable as in the case of **perjury.**

3941. All **real property** in this state, subject to taxation under this act, including real estate becoming taxable for the first time, shall be **listed** to the owners thereof by such owners, their agents, county clerks or assessors, or the county board, and assessed with reference to the amount owned on the first day of April in each year, including all property purchased on that day; *Provided*, That no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the same name of the owner or owners thereof.

Lands that are contiguous, how taxed. **8**, 519. Lands purchased from United States liable for taxes as soon as purchase money paid. **6**, 128. Homestead liable to taxation as soon as owner is able to perfect his title. **5**, 401.

3942. [**Same.**]—The owner of property on the first day of April in any year shall be liable for the taxes of that year. The purchaser of property on the first day of April shall be considered as the owner on that day.

25, 57 (40 N. W., 595).

3943. [**Assessment books, how made.**]—The county clerk shall make up for the several townships or precincts in his county, in books to be provided for that purpose, by the auditor of public accounts, the lists of lands and lots to be assessed for taxes. Such books shall also contain sufficient space with suitable columns for the names of persons and the amounts, kinds, and value of personal property required by law to be listed according to the schedule set forth in section twenty-four. When a whole section, half section, quarter section, or half-quarter section belongs to one owner, it shall, at the request of the owner or his agent, be listed as one tract, and when all lots in the same block belong to one owner, they shall, at the request of the owner or his agent, be listed as a block. When several adjoining lots in the same block belong to the same owner, they shall, at the request of the owner or his agent, be included in one description; *Provided*, That when any tract or parcel of real estate is situated in more than one township or precinct, or in more than one school, road, or other district, the portion thereof in each shall be listed separately. Said clerk shall enter in the proper column, opposite the respective tracts or lots, the names of the owners thereof, so far as he shall be able to ascertain the same. Said books shall contain columns in which may be shown the number of acres or lots improved, and the value thereof; the number of acres or lots not improved, and the value thereof; the total value, and such other columns as may be required.

Not void if assessor fails to assess in name of real owner. **9**, 378 (2 N. W., 732).

3944. **Separate books** shall be made for the assessment of property and collection of all taxes and special assessments thereon, within the corporate limits of cities, towns, and villages, if ordered by the county board, except where such cities, towns, or villages are included within the limits of any township in cities under township organization, and except in cities of the first class.

3945. The county clerk shall cause such **lists** to be carefully **compared** with the list of taxable real property on file in his office.

3946. The county clerk shall cause such assessment **books**, and all blanks necessary to be used by the assessor in the assessment of real and personal property, to be in readiness for **delivery to** the **assessor** on or before the first day of April in each year; * and for preparing assessment books, the county commissioners shall pay such sum as shall seem to them just and equitable.

All after * added 1883, p. 276.

3947. There shall be held annually on the third Tuesday of March, at the office of the county clerk of each county, a **meeting of** the **assessors** of said county for the purpose of consultation in regard to the value of the various kinds and classes of property to be by them assessed; and it shall be the duty of each assessor to attend such meeting, and to call upon and receive from the county clerk the necessary books and blanks for the assessment of property, and the failure of any assessor so to do shall be deemed sufficient cause to declare his office vacant, and for the appointment of a successor.

Rewritten 1885, p. 305.

3948. If, after the delivery of such books to the assessor in any year, the clerk shall receive an abstract showing the entry of any **lands** or lots **not** contained in such **books**, it shall be his duty to furnish a list of the same to the proper assessor within five days after such abstract is received.

3949. If any **assessor**, for any cause whatever, shall be unable to perform the duties required of him within the time designated by law, he may, as the case may require, appoint one or more suitable persons to act as **deputies** to assist him in making the assessment, and may designate the district, or portion of the township, precinct, county, city, or village in which such deputy or deputies are authorized to list and assess property. Such deputy assessors shall make their returns to the assessor.

3950. Assessors shall, between the first day of April and the first day of June of each year, actually view and determine as nearly as practicable, the value of each tract or lot of **land** listed for taxation, as provided by this act, and set down in proper columns, in the book furnished him, the value of each tract or lot improved, the value of each tract or lot not improved, and the total value. He shall also set down, in separate columns, the number of acres in wheat, corn, oats, meadow, and other **field products**, the number of fruit, forest **trees**, and grape vines, in that year.

Assessor acts judicially. 20, 598 (31 N. W., 117).

3951. If the assessor discovers any **real property** subject to taxation, which has **not** been **returned** to him by the clerk, he shall list and assess such property.

3952. The assessor shall also, between the first day of April and June, proceed to take a list of the taxable **personal property** in his county, township, precinct, city, or village, and **assess** the value thereof in the **manner** following, to-wit: He shall call at the office, place of doing business, or residence of each person required by this act to list property, and list his name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act; and the person listing the property shall enter a true and correct statement of such property, in the form prescribed by this act, which shall be signed and sworn to, to the extent required by this act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his books with the name of the parties in alphabetical order, and the numbers and kinds and values of the several species of property required to be listed, and their total value; *Provided*, If any property is listed or assessed on or after the first day of June, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time.

All property found by the assessor in his precinct **while the books are in his hands** must be assessed. 10, 160 (4 N. W, 946).

3953. If any **person required** by this act **to list** property shall be sick or **absent** when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person a written or printed **notice,** requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, the statement or schedule required by this act. The date of leaving such notice, and the name of the person required to list the property shall be carefully noted by the assessor in a book to be kept for that purpose.

3954. The **assessor** may **examine,** on oath, any person whom he may suppose to have knowledge of the amount or value of the personal property which the person so refusing is required to list. The assessor may take the proper form of action to compel the attendance of a **witness.**

3955. It shall be the duty of assessors, when making assessments of personal property, to **designate** the number of **school district** or districts in which each person assessed is liable for tax; which designation shall be made by writing the number of the district opposite each assessment in a column provided for that purpose in the assessment book.

3956. When the **personal property** of any person is assessable **in several districts,** the amount in each shall be assessed separately and the name of the owner placed opposite the amount.

3957. In all cases of **failure to obtain** a **statement** of personal property from any cause, it shall be the duty of the **assessor to ascertain** the amount and value of such property, and assess the same as he believes to be the fair amount and value thereof.

See 7, 142.

3958. The **assessor,** when requested, shall **deliver to** the **person assessed a copy** of the statement of property hereinbefore required, showing the valuations of the assessor of the property so listed; which copy shall be signed by the assessor.

3959. **Assessors,** in the execution of their duties, shall use the **forms** and pursue the instructions which shall, from time to time, be transmitted to them by the auditor of public accounts, or that may be furnished to them by the county clerk, or other officer, in pursuance of law.

3960. In counties under township organization, the assessor *with his assessment book and the schedules and statements of property by him assessed,* together with the **town board,** shall meet on the first Monday of June, for the purpose of **reviewing** the **assessment** of property of said town. And on the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same as shall appear to them just. No complaint that another is assessed too low shall be acted upon until the person so assessed, or his agent, shall be notified of such complaint, if a resident of the county.

* to * inserted and latter portion of old act omitted 1885, p. 306.

3961. The **assessor** shall, on or before the second Monday of June of the year for which the assessment is made, **return** his assessment book to the county clerk, verified by his affidavit, substantially in the following form; "State of Nebraska, —— county, ss. I, ——, assessor of ——, do solemnly swear that the book to which this is attached contains a correct and full list of all real and personal property subject to taxation in ——, so far as I have been able to ascertain the same. That the value of all property, moneys, and credits of which a statement has been made and verified by the oath of the person required to list the same is hereby truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the above returns (where the assessment has been corrected by a town board 'except as corrected by the town board'), and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property which he was required by law to list, nor have I connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

Amended 1889, pp. 570 and 577. Failure of assessor to make return within time prescribed is a mere irregularity and does not invalidate the tax. **12,** 396 (11 N. W., 854). While the oath is essential, the mere fact that it is not *attached* to the assessment roll does not render it invalid. **12,** 90 (10 N. W., 568). If return not sworn to, assessment invalid. **16,** 450 (20 N. W., 389).

3962. The assessor shall at the same time **deliver** to the **county clerk** all the **schedules** and statements of personal property which shall have been received by him, endorsed with the name of the person whose property is listed, and arranged in alphabetical order; and the clerk shall preserve the same in his office.

3963. The several assessment **books** shall be filed in the office of the county clerk, and there remain **open to** the **inspection** of all persons; *Provided,* That the county clerk in counties under township organization shall, in the month of April, deliver to the town clerks of the several **towns** in the county the assessment books of their respective towns for the previous year, such books to be returned by the town clerks to the county clerk's office before the second Monday of June of the same year.

3964. Each **assessor** and deputy assessor shall be **paid** out of the county treasury for each and every day actually engaged in making the assessment, the sum of three dollars; *Provided,* That each assessor shall receive, for the time necessarily employed in attending the meeting of the assessors, as provided in section sixty-two (62) of this act [3960], and for the time necessarily employed in making return to the county clerk of his assessment book, and the schedules and statements of personal property, the sum of two dollars per day and mileage, at the rate of five cents for each mile necessarily traveled.

Rewritten 1885, p. 306. Sec. 62 probably should be sec. 49 [3947].

3965. Assessors and deputy assessors shall make out their **accounts** in detail, giving the date of each day which they shall have been employed, which account they shall verify under **oath.** The assessor shall not be entitled to compensation until he shall have filed the lists, schedules, statements, and books appertaining to the assessment of property for such year, in the office of the county clerk—the **books** to be accurately made and **added up.** An assessor or deputy assessor shall not be entitled to pay unless he has performed the labor and made return in strict compliance with law.

3966.—The **clerk,** upon receipt of the assessment books of real property, shall **correct** all **errors** of whatsoever kind which he may discover, and add the name of the owner, if known, when the same does not already appear, and the description of all real property which has been omitted by the assessor and is liable to taxation.

3967. If the assessor has listed and assessed any **real property not returned** by the auditor of public accounts to the clerk, the clerk shall immediately advise the auditor thereof, who shall ascertain if the same is taxable, and advise the clerk. If taxable the clerk shall enter the same in the list of taxable property in his office; if not, he shall correct the assessment books.

3968. The **county board** shall hold a session of not less than three (3) nor more than thirty (30) days for the purpose contemplated in this section, commencing on the first Tuesday after the second Monday in June annually (after the return of the assessment books) and shall: *First*—Assess all such lands and lots as have been listed by the county clerk and not assessed by the assessor. Said board may make such alterations in the description of real property as it shall deem necessary. *Second*—On the application of any person considering himself aggrieved or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same as shall appear to be just. No complaint that another is assessed too low shall be acted upon until the person assessed, or his agent, shall be notified of such complaint, if a resident of the county; *Provided*, That in the counties under township organization [such application] shall have been made to the town board of **equalization**, and been rejected by them. *Third*—It shall ascertain whether the valuation in one township, precinct, or district bear just relation to all townships, precincts, or districts in the county; and may increase or diminish the aggregate valuation of property in any township, precinct or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of property in the county, but shall in no instance reduce the aggregate valuation of all the townships, precincts, or districts below the aggregate valuation thereof as made by the assessors; neither shall it increase the aggregate valuation of all townships, precincts, or districts except in such amount as may be actually necessary and incidental to a proper and just equalization. It may consider lands, village or city lots, and personal property (except property assessed and valued by the state board of equalization) separately and determine a separate rate per cent of addition or reduction for each of said classes of property as may be necessary to a just equalization thereof.

Amended 1883, p. 274; 1887, pp. 571, 577; 1889, p. 555. Where the taxpayer feels himself wronged by the assessment or valuation of his property, he should resort to the board of equalization for relief; failing to do so, he has no remedy in equity. **10,** 216 (5 N. W., 1016); **11,** 66 (7 N. W., 861). Failure of board to meet no ground for equitable relief, when. **11,** 344 (7 N. W., 859). The power of county board to equalize assessments or grant any manner of relief against over-assessments (except to refund illegal taxes paid under protest) can only be exercised while sitting as a board of equalization. **14,** 525 (16 N. W., 756). Notice must be first given to taxpayer before reassessing his property. **7,** 260. County board may equalize the assessments between the several precincts and no notice is necessary. **19,** 155 (27 N. W., 142); **26,** 705 (42 N. W., 882). Where value of an entire precinct or tax district is too low, it may be raised by the board without notice. **12,** 93 (10 N. W., 568). County board may, on complaint, either oral or written, correct assessment of personalty on farm by town board of adjacent township. **24,** 357 (38 N. W., 735). See **8,** 516.

Sec. 3969. "An act to provide for the equalization of assessments in cities of the second class under township organization." 1889, p. 537. In force March 27.

3969. That in all **cities of** the **second class** in the state in counties under township organization, and in counties that may come under such organization, the city council and supervisors of such cities shall constitute a **board of equalization** for such city, whose duty it shall be to meet and equalize the assessments of such city at the same time and in the same manner as now provided by law for townships in counties under township organization.

Such board cannot raise the assessed value of all the property of such city. **11,** 78 (7 N. W., 861).

3970. If, hereafter, for any reason, any taxable real property shall escape taxation in any year, whether on account of an **omission** to assess the same, or because the **assessment** or levy of any tax therein, or any part thereof, shall be **invalid,** except for the reason that the same was not subject to taxation or was levied for an illegal or unauthorized purpose, and if, for any reason, except as aforesaid, any tax levied thereon shall be recovered back by the payer thereof, or the payment thereof shall be prevented by the final judgment or process of any court, it shall be the duty of the county board, when sitting as a board of equalization in any subsequent year, to assess said property at the proper valuation for the year, or years, for which said tax should have been levied thereon, and to levy thereon, upon such assessment at the time of levying other taxes in such subsequent year at the same rate of state, county, township, school district, city, village, and other levied taxes as might legally have been levied thereon for the year in which it shall have so escaped taxation, which tax and the levy thereof shall be in addition to all current and other taxes on the same property for such subsequent year, and [be] as valid for all purposes as though properly assessed and levied in the year in which such land so escaped taxation.

Not void for want of uniformity. 4, 303. See note to section 3897, *supra*, citing **11, 344**.

3971. As soon as practicable after the assessment books are equalized and corrected by the county board, and on or before the tenth day of July annually, it shall be the duty of county **clerks**, upon receipt of the assessment books, to make out and **transmit to the auditor** an **abstract** of the assessment of property, showing the number, value, and average value of each kind of enumerated property, as shown by the assessment; the value of unenumerated property, and total value of personal property; the number of acres, value, and average value of improved lands; the number of acres, value, and average value of unimproved lands; the total number of acres, total value, and average value per acre of all lands; the number, value, and average value of improved village or city lots; the number, value, and average value of unimproved village or city lots; the total number of lots, total value, and average value of all lots, and the total value of all property; the number of acres in cultivation of wheat, corn, oats, meadow, and other field products, and the number of fruit and forest trees and grape vines. Said abstract shall be made out on blanks, which it shall be the duty of the auditor to furnish county clerks for that purpose. The values to be given in said abstract shall be the valuations assessed by the assessor, and equalized and corrected as hereinbefore provided.

3972. It shall be the duty of the county clerks, in case of **failure** of any assessor **to make** return or **assessment within** the **time** specified in this act to transmit a statement of the assessment in all the townships, precincts, cities, villages, or districts from which returns have been received, together with a statement of the amount of taxable property assessed in the defaulting townships, precincts, cities, villages, or districts for the previous year.

3973. The governor, auditor of public accounts, and treasurer (or the majority of them) shall constitute the **state board of equalization**, and said board of equalization shall hold a session at the capital of the state, commencing on the third Monday in July in each year; and it shall be the duty of said board to examine the various county assessments, and to decide upon the rate of the state tax, the state school tax, and the state sinking fund tax, to be levied for the current year, together with any other general or special taxes required by law to be levied, and to equalize and make the levy of such taxes throughout the state; but such equalization shall be made by varying the rate of taxation on the different counties in case the said board of equalization are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

3974. The **rate of** the general **state tax** shall be sufficient to realize the amount necessary to meet appropriations made by the legislature for the year in which the tax is levied, not exceeding five mills on the dollar valuation. The rate of the state school tax shall not be less than one-half mill, nor more than one and one-half mills on the dollar valuation; and the rate of the state sinking fund tax shall not be more than three-fourths of a mill on the dollar valuation in any county in the state.

Rewritten 1881, p. 320.

3975. On or before the first Monday of August in each year, the **auditor** is required to transmit to the county clerk of each county a **statement of** the **rate** of taxation required in said county for the general state tax, the state school tax, and the state sinking fund tax, as directed to be levied and collected by the state board of equalization. Should the state board of equalization fail to fix the rate of taxation in any or all of the counties, then the auditor is required to notify the county clerk that the rate to be levied and collected in such county or counties is the maximum rate provided in the preceding section of this act.

3976. On the last day of sitting as a board of equalization the **county board** shall **levy** the necessary **taxes** for the current year, including all county, township, city, school district, precinct, village, and other taxes required by law to be certified to the county clerk and levied by the county board; **Provided*, That school district taxes voted at the school district's annual meeting and certified to the county clerk, on or before the first Monday in July, shall be levied by said county clerk when such levy is within the limits of the law.* The **rate** of tax for county purposes shall not exceed one dollar and fifty cents on the one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of the present constitution, unless authorized by a vote of the people of the county, and shall be as follows: In counties under township organization, for ordinary county revenue, including the support of the poor, not more than nine mills on the dollar valuation; for roads, not more than five mills on the dollar valuation; for county bridge fund, not more than four mills on the dollar valuation; for county sinking fund, not more than four mills on the dollar valuation, and labor tax as provided in the following section. In counties not under township organization, for ordinary county revenue (including the support of the poor) not more than nine mills on the dollar valuation; for roads, not more than five mills on the dollar valuation; for county bridge fund, not more than four mills on the dollar valuation; for county sinking fund, not more than three mills on the dollar valuation, and labor tax as provided in the following section.

Amended 1885, p. 307; amended and * to * inserted 1889, p. 552. The fact that levy of city taxes was later than it should have been does not render taxes invalid. **12**, 93 (10 N. W., 568). Where levy was for general fund 7½ mills and "poor house fund," so called, 2½ mills, held valid, as it did not exceed the 10 mills then allowed to be levied. **12**, 325 (11 N. W., 332). Duty of clerk to levy tax on registered bonds not of county board. **7**, 493.

3977. Every male inhabitant in each road district, being over the age of twenty-one years, and under the age of fifty years, except paupers, idiots, and lunatics, shall be assessed by the assessors to pay a **labor tax** of three dollars. Said tax may be paid in cash or commuted for in labor in the manner provided for in the act on **roads.** Persons living in cities or incorporated villages who are liable by the provisions of law regulating cities or villages to pay a poll or labor tax, or work upon the **streets** thereof, shall not be assessed to pay the tax provided for in this section.

3978. The proper authorities of cities, villages, townships, and districts authorized by law to vote bonds or assess taxes (except cities of the first class) shall annually, on or before the first Monday in June, certify to the county clerk the several **amounts** which they severally require to be raised by taxation, including all amounts **due upon** legal and valid **bonds** outstanding against such corporation;

* *Provided*, That school district taxes shall be certified to the county clerk on or before the first Monday in July.

Time changed from second Monday, 1883, p. 276. All after * added 1889, p. 553.

3979. After the equalization by the county and state boards as hereinbefore provided, and the levy of taxes made by them, and before the first day of October, the county clerk shall transcribe the **assessments** of the several precincts, townships, cities, or villages, into a suitable **book** to be provided at the expense of the state, properly ruled and headed with distinct columns, in which shall be entered the description of lands, number of acres, and value, number of city and village lots, and their value, value of personal property, and each description of tax, with a column for polls, one for payment, and a number of columns for delinquent taxes of previous years.

3980. All taxes which are uniform throughout any precinct or township shall be formed into a single tax, entered upon the tax list in a single column, and be denominated a **consolidated tax**; and each tax receipt shall show the percentage levied for each separate fund.

3981. The **tax list** shall be **completed** by the county clerk by carrying out in a column by itself the consolidated tax as provided in the preceding section, with the labor tax, school district tax, and any irregular tax, each in separate columns, and after adding up each column of said taxes, he shall, in an abstract at the end of each precinct, township, city, and village list, apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each of said funds, showing a summary of each district tax.

3982. The tax list shall be completed and delivered to the county treasurer on or before the first day of October annually, and before its delivery the county clerk shall attach a **warrant** under the seal of the county, which warrant shall be signed by said clerk, and shall in general terms command the said treasurer **to collect** the taxes therein mentioned according to law; but no informality therein and no delay in delivering the same after the time above specified shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this act.

3983. The **tax list**, when completed, shall be the property of the county, and shall be substantially in the following **form:**

STATE LEVY.		
Insane patients......	......	Mills.
General..................	......	"
Sinking..................	......	"
School....................	......	"
University..............	......	"
State bonds.............	......	"
Total	......	"
COUNTY LEVY.		
Poor fund	.....	Mills.
General..................	......	"
Special bridge..........	......	"
Sinking..................	......	"
Int. Reg. bonds......	......	"
Total......................	......	"

TAX LIST..................PRECINCT..................COUNTY, NEBRASKA,

FOR THE YEAR 18......

Owners' Names.	Description of Lands or Town Lots.						No. School District.	No. Road District.	State and County Consolidated Tax.	County and District Taxes.						Advertising.	Total.	No. of Receipt.	Remarks.
	Part of section or part of town.	Section or lot.	Town or block.	Range.	Acres.	Value.				Road Tax.		School District Tax.	School District Bond Tax.	Precinct Tax.	Poll Tax.				

3984. **Railroad** and **telegraph property** assessed by the state board of eqalization, as provided in section 40 [3936], shall be **apportioned** by the county clerk among the respective precincts, townships, school districts, road districts, cities, and villages in which the same may be, entered on a tax list, and collected by the county treasurer.

3985. In all cases where taxes are delinquent on any real property for any preceding year or years, it shall be the duty of the county clerk in making up the list for the current year, to **enter** the amount of the **delinquent tax** opposite the tract or parcel of real property against which it was charged, in a suitable column or columns, with the year or years in which the same was due, and the amount thereof shall be collected in like manner as tax on other real property for that year may be collected.

3986. The county treasurers shall be *ex-officio* county **collectors** of taxes within and for their respective counties, and in counties under township organization town treasurers shall be the collectors of taxes in their respective townships, and the treasurer of each city or village not included within the limits of any township shall be the collector of taxes therein.

3987. State warrants are receivable for the amount **payable** into the state treasury on account of tax levied for general state purposes. County warrants are receivable for the amount payable into the county treasury for general purposes. City warrants shall be received for the city general tax, village warrants for village general tax, and town warrants for the township general tax. State, county, city, village, or township taxes levied for the school fund, or sinking fund, shall be paid only in lawful money of the United States. State, county, city, village, or township taxes levied for other special purposes shall be paid only in lawful money of the United States, or by warrants draw upon and payable out of the particular fund for the payment of the tax upon account of which they are tendered. Road and labor tax shall be paid as provided in the act on "roads."

See **29,** 530 (45 N. W., 778).

3988. **No demand** for taxes shall be **necessary** but it shall be the duty of every person subject to taxation under the laws of the state to attend at the treasurer's office at the county seat and pay his taxes; *Provided,* That in counties under township organization the town collector shall, as soon as he receives the tax book or books, call at least once on the person taxed at his place of residence or business, if in town, city, or village, and shall demand payment of the taxes charged to him on his property. And if any person neglect so to attend and pay his personal taxes, or shall neglect and refuse after being called upon by the town collector, until after the first day of January next after such taxes become due, the treasurer, either by himself or deputy, or the sheriff of the county when directed by distress warrant issued by said treasurer to said sheriff, or the town collector, is directed to levy and collect the same, together with the penalty and costs of **collection,** by distress and sale of personal property belonging to such person in the manner provided by law for the levy and sale on execution, and the treasurer and town collector shall be entitled to the same fees for their services as are allowed by law for selling property under execution; *Provided,* That in case no personal property of the delinquent can be found, it shall be the duty of the treasurer and town collector, when directed so to do by order of the board of county commissioners or the board of supervisors, to commence suit by civil action in the district court of said county in the same manner as other civil actions are commenced, and prosecute the same to judgment and collection by attachment, execution, or garnishment, as the case may require, and that no property whatever shall be exempt from levy and sale under process issued on the judgment obtained in such action, and in case judgment shall be recovered, costs shall follow the judgment without regard to the amount of said judgment; *Provided further*, That in case any person having personal property assessed, and upon which the taxes are unpaid, shall, in the opinion of the treasurer and town collector, be about to remove out of the county, or in any other manner seek to put his personal property out of the reach of the treasurer or collector, it shall be the duty of the treasurer and town collector to collect such taxes by distress or attachment, as the case may require, at any time after the tax has become due. In case any person owing taxes remove, the treasurer and town collector shall, among other steps to collect such tax, forward when necessary such tax claim to the treasurer or tax collector at the adopted residence or place of abode of such tax debtor, and such taxes shall be collected at the latter place, as other personal taxes by distress or civil action, as the case may require, and return to the proper county, less such charges for collection, as are hereinbefore provided. And such treasurer, or tax collector, to whom such tax claim shall be so forwarded, is hereby authorized to commence and prosecute to judgment such civil action as may be necessary in the district court of such county, in the name of the board of county commissioners or the board of county supervisors of the county from which such tax claim shall be forwarded, immediately upon receipt thereof by him, upon which judgment, without regard to the amount thereof, the plaintiff shall recover costs, and such judgment shall have the same effect as hereinbefore provided when suit is brought in the county where such tax is levied.

Amended 1887, p. 573; 1889, p. 531. Must first exhaust personalty. **8**, 122. The treasurer cannot sell personal property for real estate tax. **18**, 634 (26 N. W., 373). When authorized and directed by county board to collect personalty taxes by suit, treasurer may do so in his own name. **12**, 198 (10 N. W., 714). Illegal fees. **5**, 109. Measure of damages in replevin from officer distraining for taxes is amount of taxes, legal costs, and charges in making collection. **6**, 226. Petition should show that delinquent had personal property within jurisdiction of treasurer. **8**, 334.

3989. **When** the **treasurer distrains** goods, and the owner shall refuse to give a good and sufficient bond for the delivery of said goods, on the day of **sale,** he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after their taking, in the manner constables are required to give notice of the sale of personal property under execution; and the time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders; and in case of adjournment, he shall put up a notice thereof at place of sale. Any surplus remaining above the taxes, charges of keeping, and fees for sale, shall be returned to the owner, and the treasurer shall, on demand, render an account in writing of the sale and charges.

3990. In counties under township organization the county clerk shall make a **duplicate** of the **tax list** for each township and for each city and village not included within the limits of any township; and on or before the first day of January the county clerk shall notify each township, city, or village treasurer elect of the amount for which he is required to furnish a bond for the collection of taxes. To each duplicate list the county clerk shall attach a **warrant** directed to the proper treasurer, similar to that required in section eighty-three (83) [3982], to be attached to the original tax list to county treasurer, and such warrant shall be full and complete authority for the collection of taxes on said duplicate; and the county treasurer shall not receive or collect any of the taxes charged in any duplicate tax list so delivered, except the tax of non-residents of the township, city, or village, until the same has been returned to him as herein provided. The said county clerk shall procure and deliver to each township treasurer with said tax list a tax **receipt book** with a blank margin or stub, upon which the said township, city, or village treasurer shall enter the number and date of each tax receipt given to each taxpayer, the amount of tax, and by whom paid, and the paid tax receipt book containing said stubs shall be returned to the county clerk, with the said duplicate tax list as hereinafter provided.

Amended 1883, p. 276; 1889, p. 523. Clerk not entitled to fees for preparing duplicate tax list. **29,** 114 (45 N. W., 275). See **25,** 625 (41 N. W., 553).

3991. Every township, city, or village treasurer, on or before the first Thursday after the first Tuesday in January next after his election; or if he be appointed, then within ten days after his appointment shall execute a bond as **collector of taxes,** with two or more securities, to be approved as other official bonds of township officers are approved, in double the amount of taxes to be collected by him, conditioned upon the faithful performance of his duties as such collector. Signatures to such bonds signed by a mark shall be witnessed, but in no other cases shall witnesses be required. Said bond shall be substantially in the following form, viz.: "Know all men by these presents, that we, A. B., of ——, in the county of ——, in the state of Nebraska, as —— treasurer, and C. D. and E. F., of said county and state, as securities, are held and firmly bound unto the state of Nebraska in the penal sum of —— dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents. Signed and sealed this —— day of —— 18—. The condition of the foregoing bond is such, that if the above bound A. B. shall perform all the duties required to be performed by him as treasurer for the year —— in the —— of ——, in the county of ——, Nebraska, in the time and manner prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers, and moneys pertaining to his said office, then the foregoing bond to be void, otherwise to remain in full force. A. B., C. D., E. F." He shall also take and subscribe an **oath** to be endorsed on the back of the bond substantially as follows: "I do solemnly swear that I will support the constitution of the United States, and the constitution and laws of the state of Nebraska, and that I will faithfully discharge the duties of treasurer in and for the —— of ——, in the county of ——, state of Nebraska, according to law and the best of my ability. A. B." Such bond and oath shall be filed and recorded in the record of official bonds in the office of county clerk.

Amended 1883, p. 277; 1889, p. 524.

3992. **If** such **collector** shall **fail to execute** the bond and take the oath prescribed in the preceding section, within the time required, his office, as such collector, shall be deemed vacant, and the county clerk shall immediately fill the same by appointment under his hand and the seal of the county, and such appointee shall hold the office as such collector and shall execute the bond, take the oath, and perform the duties of such collector as provided by law.

3993. Upon the delivery of the tax lists to the collectors, the **county clerk** shall, in a book to be provided for that purpose, **charge** each **collector** with the total amount of each kind of tax to be collected by him, and said books shall be prepared so as to show in proper columns all amounts of each and every kind of tax paid over to the county treasurer, or accounted for in the manner hereinafter provided.

3994. In counties under township organization, every collector, upon receiving the tax book or books, shall proceed to collect the taxes therein mentioned, except taxes assessed against railroads and telegraph property as provided in section 40 of this act [3936], which **taxes** shall be **collected** by the county treasurer as in counties not under township organization, and for that purpose shall call at least once on the person taxed or at his place of residence or business, if in the town, city, or village of such collector, and shall demand payment of the taxes charged to him on his property.

3995. Each township, city, or village treasurer shall every thirty (30) days return to the county treasurer a statement of the amount of all taxes collected by him, showing each kind of tax, and at the same time pay over to said treasurer the amount so shown to have been collected, except township, city, village, and school taxes, and the township, city, or village treasurer shall pay over to the city or village treasurer of cities or villages not constituting a township, and to the various school district treasurers on demand, all moneys collected by him belonging to said city, village, or school district, taking duplicate receipts therefor, showing the amount of each kind of tax paid over; one of which shall be filed with the county clerk, who shall give the treasurer presenting the same credit therefor on his account.

Amended 1887, p. 575; 1889, p. 526.

3996. Each township, city, and village treasurer shall, on the first day of September, or within ten days thereafter, annually make report to the county clerk of all unpaid personal tax, and unpaid real and personal property tax, and thereafter such tax so reported shall be received and receipted for by the county treasurer only. Each township, city, or village treasurer shall return their duplicate tax list to the county clerk on the first day of September, or within ten days thereafter next after receiving the same, and make a final settlement for the amount of taxes placed in his hands for collection, and shall then receive credit for all unpaid taxes, including all real and personal property tax of non-residents; *Provided*, That the county clerk may first notify in writing the several collectors upon what day, within ten days after the first day of September, they shall appear at his office and make final settlement.

Amended 1883, p. 279; 1887, pp. 575, 579; 1889, p. 526.

3997. If any collector shall be unable to collect any tax on any property charged in the tax list, he shall, at time of final settlement with the county clerk, make a statement of all real estate in said tax list on which the taxes remain due and unpaid, giving the name of the person to whom listed if entered on the tax list, and the amount of each kind of tax charged thereon, and showing in detail the name of each person charged with personal property tax, which has not been paid, the value of such property tax and the amount of each kind of tax so charged, and the cause of delinquency in each and every case; and such statement shall be accompanied by an affidavit that the same is true and correct, that the sums therein mentioned remain due and unpaid, and that to the best of his knowledge and belief none of the persons so named in said statement have any personal property within the county out of which the personalty tax can be collected. And in no case shall any collector be entitled to any abatements of the tax charged against him until said statement and affidavit are filed with the county clerk.

3998. Upon filing of said statement and affidavit the county clerk shall allow the collector credit for the amount of taxes therein stated; where the collector is a township, city, or village treasurer, he shall give the county clerk duplicate receipts in his name of office as such treasurer for the total amount of each kind of tax collected by him for township, city, or village purposes, and the county clerk shall give him credit therefor on his account and transmit to the proper township, city, or village clerk one of said receipts.

3999. Upon final settlement with collectors, as aforesaid, the county clerk shall deliver to the county treasurer the collector's tax lists, and shall charge such treasurer in the account required by law to be kept with him with the taxes remaining due and unpaid therein.

4000. If any **collector** shall fail to appear and make final settlement, or pay over the amount in his hands, when required in this chapter, the county clerk shall forthwith cause the **bond** of such collector to be put in **suit**, and recovery may be had thereon for the amount due from such collector as charged in his tax list, less the credits to which he may be entitled under the provisions of this chapter, and costs of suit. No act or settlement by such collector after the commencement of any such action shall avoid his liability for costs of such suit.

4001. The collector shall receive **taxes on part of** any lot, piece, or parcel of **land** charged with taxes, when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an **undivided share** of real estate. In such cases the collector shall designate on his record upon whose undivided share the tax has been paid.

4002. Whenever any person shall pay the taxes charged on any property, the **collector** shall **enter** such **payment** in his book, and give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description in the collector's book, in whole or in part of such description as the case may be; and such entry and receipt shall bear the genuine signature of the collector or his deputy receiving such payment; and whenever it shall appear that any **receipt** for the payment of taxes shall be **lost** or destroyed, the entry so made may be read in evidence in lieu thereof. The collector shall enter the name of the owner, or of the person paying tax, opposite each tract or lot of land when he collects the tax thereon, and the postoffice address of the person paying said tax.

4003. The **tax receipt** shall be substantially in the following **form:**

STATE LEVY.		
Insane patients......	......	Mills.
General..................	......	"
Sinking..................	......	"
School..................	......	"
University............	......	"
State bonds...........	......	"
Total..................	......	"
COUNTY LEVY.		
Poor fund............	......	Mills.
General..................	......	"
Special bridge........	......	"
Sinking fund.........	......	"
Int. Reg. bonds......	......	"
Total..................	......	"

$..................

TREASURER'S OFFICE, ...

.... COUNTY, NEB., ..., 18..

Received..

....Dollars,
100

in full of the taxes for the year 18......, on the following described property:

NO..........

.... *Treasurer.*

...., *Deputy*

If the tax be paid upon land or lot the receipt shall describe the land as it is described in the tax roll and give the valuation thereof; and if upon personal property it shall state the value thereof, and on the reverse side of the receipt there shall be a statement giving the amount of each kind of tax for each one hundred dollars ($100).

Amended 1891, p. 313.

4004. On the first day of February of the year after which **taxes** shall have been assessed, all unpaid personal taxes, except city taxes in cities of the first class, shall become **delinquent** and shall draw thereafter ten per cent per annum, which interest shall be collected the same as the tax so due. *On the first day of May of the year after which taxes shall have been assessed, all unpaid taxes upon real property, except city taxes in cities of first classs, hall become delinquent, and such delinquent taxes shall draw thereafter ten per cent interest, which interest shall be collected the same as the tax so due.

First date changed from May and all after * added 1885, p. 309.

4005. The county **treasurer** is required to keep a **cash book,** in which he shall enter an account of all money by him received, specifying, in proper columns provided for that purpose, the date of payment, the number of the receipt issued therefor, by whom paid, and on account of what fund or funds the same was paid, whether state, county, school, road, sinking fund, or otherwise, and the amount paid in warrants, orders, or receipts, each in a separate column, and the total amount for which the receipt was given, in another column; and the treasurer shall keep his account of money received for and account of taxes separate and distinct from moneys received on any other account; and shall also keep his account of moneys received for and on account of taxes levied and assessed for any one year separate and distinct from those levied and assessed for any other year; and all entries in said cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

4006. All **receipts** issued by the county treasurer for taxes paid to him by collectors and others shall be **numbered** consecutively, commencing with number one on the first receipt issued for the taxes for any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year for which the same has been levied and assessed in this state. *The numbering of the tax receipts shall be done by the county clerk or printer before they are delivered to the county treasurer. They shall be firmly bound in book form and the original duplicate and triplicate of each receipt shall be attached together as one and each duplicate and triplicate of each original receipt shall bear the same number as the original. The county clerk shall, on the delivery of the receipts, charge the county treasurer with the number of receipts delivered, and the county treasurer shall immediately examine the numbering of the receipts and report to the county clerk any irregularity found therein. The county treasurer shall receipt to the county clerk therefor, and shall be held strictly accountable for all receipts, including receipts found missing at regular settlements, also for all detached receipts, the duplicates of which do not show the entry of taxes paid. All irregularities in the issuance of receipts that render them worthless must be shown on the face of the original, which must in no case be detached from the duplicate.

All after * added 1885, p. 310.

4007. Whenever any taxes are paid, and in counties under township organization after the return of the duplicate lists by township collectors, the treasurer shall **write on** the **tax lists,** opposite the description of the real estate or personal property whereon the same were levied, the word "**paid,**" together with the date of such payment, and the name of the person paying the same.

4008. On the first Monday of November in each year, between the hours of nine o'clock A. M. and four o'clock P. M., the treasurer is directed to offer at public **sale,** at the court house or place of holding court in his county, or at the treasurer's office, all lands on which the taxes levied for state, county, township, village, city, school district, or any other purpose for the previous year still remain unpaid, and he may adjourn the sale from day to day, until all the lands and lots, or blocks, have been offered, *and the treasurer shall give **notice** of such sale of real property by publication thereof once a week for three consecutive weeks, commencing the first week in October preceding the sale, in a newspaper in his county having a general circulation therein; which newspaper shall be designated by the board of county commissioners. And if there be no newspaper published in his county, he shall give notice of such sale by a written or printed notice posted on the door of the court house or building in which the courts are commonly held, or the usual place of meeting of the county commissioners, for three weeks previous to the sale, commencing on the first week in October prior thereto. The notice shall contain a notification that all lands, on which the taxes of the preceding year, naming it, remain unpaid, will be sold, and the time and place of the sale, and said notice must contain a list of the land to be sold, and the amount of taxes due thereon. The treasurer shall add to each description of land so advertised the sum of twenty cents, other than town lots, and for each town lot the sum of ten cents, to defray the expenses of advertising, which sum shall be added to the amount due on said land or town lot for taxes, and collected in the same manner as the taxes.

All after * added 1885, p. 312. Treasurer may maintain action against highest bidder for amount bid; highest bidder may enforce his bid by compelling treasurer to issue certificate of sale. **7,** 123. Since the taking effect of the act of 1877 treasurer has authority to sell real estate for taxes without first exhausting the personal property. **11,** 65 (7 N. W., 861). Force of sale and validity of tax deed are to be tested by law in force at the time of sale. **11,** 242 (9 N. W., 96). Under statute of 1871 (G. S., 517) treasurer could make a separate sale of real estate for delinquent city taxes and issue a separate certificate therefor. **11,** 65 (7 N. W., 861). Under law of 1876, illegal road taxes added to other taxes made sale illegal. Where sale is illegal, owner not liable for expenses. **11,** 512 (9 N.W., 694). Under law of 1879, taxes for previous years had to be advertised. If county board fail to let contract to lowest bidder, the treasurer should cause notice to be published. **12,** 60 (10 N. W., 539). Purchaser at sale for taxes levied at reassessment by mistake, acquires no lien. **29,** 261 (45 N. W., 461). Printing need not be let to lowest bidder, but board limited in choice by sec. 869. **24,** 106 (37 N. W., 936).

4009. The person who offers to pay the amount of taxes due on any parcel of land or town lot, or the smallest portion of the same, is to be considered the **purchaser,** and when such purchaser shall designate the portion of any tract of land or town lot for which he will pay the whole amount of taxes assessed against any such tract or lot, the portion thus designated shall, in all cases, be considered an undivided portion. In all cases where the **homestead** is listed separately as a homestead, it shall be liable only for the taxes thereon.

4010. The person purchasing any parcel or portion thereof shall forthwith pay to the treasurer the amount of taxes and costs charged thereon, and on failure to do so, the said **parcel** shall at once **again** be **offered** as if no such sale had been made. Such payments may be made in the same fund receivable by law in payment of taxes.

4011. The treasurer shall keep a sale book showing the lands sold, the name of the purchaser, and the sums for which each tract was sold, and on or before the first Monday of December following the **sale** of real property he shall file in the office of the county clerk of his county a **return** thereof, as the same shall appear on the said sale book, and such certificate shall be evidence of the regularity of the proceedings.

Real estate can only be sold for taxes to those who offer to pay and do pay the amount of *all* taxes, penalty, interest, and costs due on any parcel of land, or town lot, or the smallest portion of the same. **10,** 27 (4 N. W., 367); **13,** 203 (13 N. W., 201); **13,** 258 (13 N. W., 281).

4012. After the tax sale shall have closed, and after the treasurer has made his return thereof to the county clerk as provided in the preceding section, if any real estate remain unsold for the want of bidders therefor, the county treasurer is authorized and required to sell the same at **private sale** at his office, to any person who will pay the amount of the taxes, penalty, and costs thereof for the same, and to make out duplicate receipts for the taxes on such real estate, and deliver one to the purchaser and the other to the county clerk, as hereinbefore provided, (with the additional statement inserted in the certificate of sale that such lands have been offered at public sale for taxes, but not sold, for want of bidders), on which he is required to write, "sold for taxes at private sale;" and the treasurer is further authorized and required to sell, as aforesaid, all real estate in his county on which taxes remain unpaid, and delinquent for any previous year or years.

Under this section, it is not the duty nor is it within the power of the county treasurer to sell land at private sale until after he shall have filed in the office of the county clerk of his county a return of the sale of real property for taxes at public sale. **10**, 25 (4 N. W., 367). Tax deed issued on a private sale must recite offer and failure to sell at public sale. **17**, 354 (22 N. W., 766). County commissioners may purchase at all sales for use of the county any real estate not sold at public sale. **18**, 635 (26 N. W., 373).

4013. If any **treasurer** shall **fail to attend** any **sale** of lands as required by this act, either in person or by competent deputy, he shall be liable to a fine of not less than fifty nor more than three hundred dollars, to be recovered by an action in the district court against the treasurer and his bondsmen. And if such officer or deputy shall sell, or assist in selling, any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and willfully sell, or assist in selling, any real property for payment of taxes to **defraud** the owner of such real property, or shall knowingly or willfully execute a deed for property so sold, he shall be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay the injured party all damages sustained by any such wrongful act, and all such sales shall be void.

4014. If any county **treasurer** shall hereafter be, either directly or indirectly, concerned in the **purchase** of any real property sold for the payment of taxes, he shall be liable to a **penalty** of not more than one thousand dollars, to be recovered in an action in the district court, brought in the name of the county against such treasurer and his bondsmen; and all such sales shall be void.

4015. The **purchaser** of any tract of land sold by the county treasurer for taxes will be entitled to a certificate in writing, describing the land so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be signed by the treasurer, in his official capacity, and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires a perpetual **lien** of the tax on the land, and if after the taxes become delinquent he subsequently pays any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale, he shall have the same lien for them, and may add them to the amount paid by him in the purchase, and the treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in such certificate, the same as in other cases, and shall write thereon, "sold for tax at public sale," or "sold for tax at private sale," as the case may be. If any person shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate, but each parcel shall be separately described, and the amount paid may be entered in gross in said certificate. Such **certificate** shall be substantially in the following **form**, to-wit:

COUNTY TREASURER'S CERTIFICATE OF TAX SALE.

State of Nebraska, —— county, ss: I, ——, treasurer of the county of ——, in the state of Nebraska, do hereby certify that the following described real estate in said county and state, to-wit: (describing the same) was, on the —— day of——, 18—, duly sold by me in the manner provided by law, for the delinquent taxes for the year 18— thereon, amounting to —— dollars, including interest and penalty thereon, and the costs allowed by law, to —— for the said sum of —— dollars, he being the highest and best bidder for the same (or, such lands having been offered at public sale for taxes, and not sold for want of bidders). And I further certify, that unless redemption is made of said real estate, in the manner provided by law, the said ——, heirs or assigns, will be entitled to a deed therefor on and after the —— day of ——, A. D. 18—, on surrender of this certificate.

In witness whereof, I have hereunto set my hand this —— day of ——, A. D., 18—. ————, *Treasurer.*

Purchaser has a lien even though tax paid by him is void. **17,** 346 (22 N. W., 775). Lien may be valid though tax deed void. **15,** 325 (18 N. W., 137). Where tax deed void, purchaser subrogated to rights of county. **8,** 123. Action brought to declare taxes void court will retain for foreclosure and enforcement of lien. **9,** 379 (2 N. W., 732). Action to foreclose tax lien barred in five years after time for redemption expires. **21,** 547-8 (32 N. W., 598); **27,** 434-5 (43 N. W., 256).

4016. The **certificate** of purchase shall be **assignable** by endorsement, and an assignment thereof shall vest in the assignee, or his legal representative, all the right and title of the original purchaser; and the statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence of such assignment.

4017. The **treasurer** is authorized to demand fifty cents for each deed or certificate made by him on such sale, together with the **fee** of the notary public or other officer acknowledging the deed, but any number of parcels of land bought by any one person may be included in one deed, as may be desired by the purchaser; and whenever the treasurer makes a deed to any land sold for taxes, he shall enter an account thereof in the sale book, opposite the description of the land conveyed.

4018. The owner or occupant of any land sold for taxes, or any person having a lien or interest thereon, may redeem the same at any time within two years after the day of such sale, by paying the county treasurer for the use of such purchaser, his heirs or assigns, the sum mentioned in his certificate, with **interest** thereon at the rate of twenty per cent per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from the date of such payment; and the treasurer shall enter a memorandum of the **redemption** in the list of sales, and give a receipt therefor to the person redeeming the same, for which he may charge a fee of twenty-five cents, and shall hold the redemption money paid subject to the order of the purchaser, his agent or attorney; *Provided,* That infants, idiots, and insane persons may redeem any land belonging to them from such sale within two years after the expiration of such disability, on like terms as if redemption had been made within two years from the date of said sale, and from the date of each subsequent payment of taxes thereon, at the rate of twenty per cent per annum on the several amounts so paid by the purchaser until redemption. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited.

Sale made June 15, 1874, and deed made June 15, 1876; *held,* that the two years had not expired and deed was invalid. **13,** 536 (14 N. W., 659). Mortgagee may redeem. **11,** 269 (9 N. W., 81). A mortgagee of land may recover twenty per cent interest on tax certificates purchased before he owned the mortgage, but not after. **26,** 180 (41 N. W., 996). County not liable for redemption money collected by treasurer. **11,** 229 (9 N. W., 60). Unless same has been paid into county treasury. **11,** 357 (9 N. W., 549). Where occupant redeems and pays full amount of taxes and interest without having notice served upon him as prescribed by sec. 3 of art. IX of the Constitution, such redemption is voluntary, and he cannot recover excess of interest from county treasurer. **14,** 45 (14 N. W., 537). Cited, **11,** 72 (7 N. W., 861).

4019. If any purchaser of real estate sold for taxes under the provisions of this chapter shall suffer the same to be again sold for taxes, before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the **second sale,** during which time the land shall be subject to redemption upon the terms and conditions prescribed in this chapter; but the person redeeming shall be only required to pay, for the use of such first purchaser, the amount paid by him, with interest at the rate of ten per cent per annum. The second purchaser shall be entitled to the amount paid by him with interest, as provided in the preceding section.

4020. Any person claiming an **undivided part** of any land sold for taxes, may redeem the same on paying such proportion of the purchase money, interest, principal, and subsequent taxes as he shall claim of the land sold.

4021. In every case of a **partial redemption** pursuant to the last section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county treasurer shall convey accordingly.

4022. Hereafter no purchaser or assignee of such purchaser of any land, town, or city lot, at any sale of lands or lots for taxes or special assessments due, either to the state or any county or any incorporated town or city within the same, or at any sale for taxes or levies authorized by the laws of this state, shall be entitled to a deed for the lands or lots so purchased, until the following conditions have been complied with, to-wit: Such **purchaser** or assignee shall **serve** or cause to be served a written or printed or partly written and partly printed **notice** of such purchase on every person in actual possession or occupancy of such land or lot, and also the person in whose name the same was taxed or specially assessed, if upon diligent inquiry he can be found in the county, at least three months before the expiration of the time of redemption on such sale, in which notice he shall state when he purchased the land or lot, in whose name taxed, the description of the land or lot he has purchased, for what year taxed or specially assessed, and when the time of redemption will expire. If no person is in actual possession or occupancy of such land or lot, and the person in whose name the same was taxed or specially assessed, upon diligent inquiry, cannot be found in the county, then such person or his assignee shall publish such notice in some newspaper printed in such county, and if no newspaper is printed in the county, then in the nearest newspaper that is published in this state to the county seat of the county in which such land or lot is situated; which notice shall be inserted three times, the first time not more than five months, and the last time not less than three months, before the time of redemption shall expire.

Notice must be given three months prior to the expiration of time. **15,** 579 (19 N. W., 645). See **21,** 83 (31 N. W., 256).

4023. Every such purchaser or assignee, by himself or agent, shall, before he shall be entitled to a deed, make an **affidavit** of his having complied with the conditions of the foregoing section, stating particularly the facts relied on as such compliance, which affidavit shall be delivered to the person authorized by law to execute such tax deed, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* **evidence** that such notice has been given. Any person swearing falsely in such affidavit shall be deemed guilty of perjury, and punished accordingly.

4024. In case any person shall be compelled to publish such notice in a newspaper, then, before any person who may have a right to redeem such lands or lots from such sale shall be permitted to redeem, he shall pay the officer or person who by law is authorized to receive such redemption money, the amount paid for **printer's fee** for publishing such notice, for the use of the person compelled to publish such notice as aforesaid. The fee for such publication shall not exceed $1 for each tract or lot contained in such notice.

This does not fix the fee but is a limit to the amount the owner of the land must pay for the service if he redeem. **15,** 468 (19 N. W., 605). If no proof of the amount paid is left with the treasurer the treasurer cannot demand any amount. **26,** 765 (42 N. W., 764).

4025. At any **time** within three years after the expiration of two years from the date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the county **treasurer,** on request, and on the production of the certificate of purchase, and upon compliance with the three preceding sections, shall execute and **deliver** to the purchaser, his heirs or assigns, a **deed** of conveyance for the real estate described in such certificate.

The presenting of the certificate is jurisdictional and cannot be omitted. A second deed cannot be issued to correct errors in issuing the first. **15,** 325 (18 N. W., 137). Taking of tax deed does not suspend statute of limitation. **27,** 54 (42 N. W., 749).

4026. The **deed** so made by the county treasurer under the official seal of his office shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns, the title of the property therein described without further acknowledgment or evidence of such conveyance, and said conveyance shall be substantially in the following form: "State of Nebraska, —— County. Whereas, at a public sale of real estate for the non-payment of taxes, made in the county aforesaid, on the —— day of ——, A. D. 18—, the following described real estate was sold, to-wit: (here place description of real estate conveyed); and Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the state of Nebraska necessary to entitle (insert him, her, or them) to a deed of said real estate: Now, therefore, know ye, that I, ——, county treasurer of said county of ——, in consideration of the premises, and by virtue of the statutes of the state of Nebraska in such cases provided, do hereby grant and convey unto ——, his heirs, and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law. Given under my hand and the seal of our court this — day of ——, A. D. 18—. ———, County Treasurer."

Deed should conform substantially to requirements of statute. **4,** 324. Two separate and distinct tracts of land may be included in same tax deed. **14,** 227 (15 N. W., 203). Under sec. 68 of General Statutes, 1883, it was held that this tax deed was void on its face if it did not recite the place where sale was made. **10,** 38 (4 N. W., 362); **11,** 584 (10 N. W., 497); **14,** 227 (15 N. W., 203). Valid assessment, levy of taxes, and sale are absolutely essential to the validity of a tax deed. **11,** 266 (9 N. W., 82). Deed must have seal. **4,** 324; **15,** 325 (18 N. W., 137); **21,** 185 (31 N. W., 685).

4027. County **clerks** shall **record** the **evidence** upon which deeds are issued, and be entitled to the same fee therefor that may be allowed by law for recording deeds, and the county treasurer shall deliver the same to the county clerk for that purpose, and in case of the loss of any certificate, on being fully satisfied thereof by due proof, and bond given to the state of Nebraska in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the county clerk, to be recorded as aforesaid.

4028. The foregoing six sections shall **apply to all sales** of real estate for taxes heretofore made, as well as to such sales for taxes and special assessments hereafter to be made.

See **8,** 61; **11,** 242 (9 N. W., 96).

4029. **Deeds** made by the county treasurer, as aforesaid, shall be presumptive **evidence** in all the courts of this state, in all controversies and suits in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts: 1. That the real property conveyed was subject to taxation for the year or years stated in the deed. 2. That the taxes were not paid at any time before the sale. 3. That the real property conveyed had not been redeemed from the sale at the date of the deed. 4. That the property had been listed and assessed. 5. That the taxes were levied according to law. 6. That the property was sold for taxes as stated in the deed. 7. That notice had been served and due publication had, as required in section 123 of this chapter [4022], before the time of redemption had expired. And it shall be conclusive evidence of the following facts: 1. That the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed. 2. That the grantee named in the deed was the purchaser or his assignee. 3. That all the prerequisities of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser, were done, except in regard to the points named in this section, wherein the deed shall be presumptive evidence only. And in all controversies and suits involving the title to real property claimed, and held under and by virtue of a deed made substantially as aforesaid by the treasurer, the person claiming title **adverse** to the **title** conveyed by such deed shall be required to prove, in order to defeat the said title, either that the said real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property; but no person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States, or this state, after the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title as aforesaid; *Provided*, That in any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books, or in the receipt, the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title; *Provided further*, That in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established such sale and title shall be void.

Tax deeds not liens or incumbrances within the meaning of the statute. 8, 9.

4030. Where by **mistake** or wrongful act of the treasurer or other officer land has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing such land in the tax receipt, the **county** is to **hold** the purchaser **harmless** by paying him the amount of principal, and interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer or other officer and their bondsmen will be liable to the county to the amount of their official bond; or the purchaser, or his assignee, may recover directly of the treasurer or other officer, in an action brought to recover the same, in any court having jurisdiction of the amount, and judgment shall be against him and his bondsmen; but the treasurer or other officer and their bondsmen shall be liable only for their own and deputies' acts.

A demand of this kind must be presented to the board for audit. 28, 813 (45 N. W., 53). This statute does not apply to a sale of land where the taxes have been paid, but only to a sale made in the enforcement of a tax actually levied and delinquent, and where for some failure or omission the purchaser fails to secure the title. **10,** 568 (7 N. W., 325). In order to make county liable, it must appear that the sale failed through some "mistake or wrongful act" of the treasurer or some other officer, and the particular act done or omitted, and the particular officer doing or omitting it, should be set out in the petition. **14,** 279 (15 N. W., 363). County only liable for mistakes or wrongful acts of treasurer which are not of record. **15,** 414 (19 N. W., 479). If the assessment or subsequent proceedings are so erroneous that the lien for taxes does not attach, the county must return the money paid and interest. **18,** 473 (25 N. W., 726). County liable for principal, interest, and costs where land has been sold for taxes, and no taxes due thereon. **20,** 410 (30 N. W., 405). Purchaser may maintain action against county to recover money paid for void tax deeds. **9,** 330 (2 N. W., 707). County is also liable in such case for subsequent taxes paid by purchaser. **26,** 683 (42 N. W., 891).

4031. Whenever any **school** or university **land** bought on a credit is **sold** for taxes, the purchaser at such tax sale shall only acquire the interest of the original purchaser in such lands, and no sale of any such lands for taxes shall prejudice the rights of the state therein, or preclude the recovery of the purchase money or interest due thereon; and in all cases where real estate is mortgaged or otherwise incumbered to the school or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale of such incumbered real estate made for taxes.

4032. **[Land sold erroneously.]**—Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the record of sale that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. And in such cases the purchase money shall be refunded to the purchaser as provided by this chapter.

The power of determining the validity of a tax is a proper subject for the courts. **20,** 259 (29 N. W., 931).

4033. No **action for** the **recovery of** real **property sold** for the non-payment of taxes shall lie unless the same be brought within three years after the treasurer's deed is made as above provided; *Provided,* That where the owner of such real property sold as aforesaid shall, at the time of such sale, be a minor, or insane, or convict in a penitentiary, or under any other legal disability, three years after such disability shall be removed shall be allowed such person, his heirs or legal representatives, to bring their action.

Unless deed valid, statute does not apply. **21,** 187 (31 N. W., 685). Statute of limitation begins to run on the right to enforce a lien for taxes when the title under the tax deed fails. **21,** 183 (31 N. W., 672). Tax deed must be valid on its face to entitle person claiming under it to benefit of this statute. **14,** 228 (15 N. W., 203).

4034. **[Acts of officers de facto valid.]**—In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, clerks, supervisors, commissioners, and other officers *de facto* shall be deemed and construed to be of the same validity as act of officers *de jure.*

4035. **No sale** of real property for taxes shall be considered **invalid** on account of the same having been charged in any **other name** than that of the rightful owner, if the said property be in other respects sufficiently described.

4036. The **books** and records belonging to the offices of the county clerk or county treasurer, or copies thereof, properly certified, shall be deemed sufficient **evidence** to prove the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

23, 454 (36 N. W., 756).

4037. The **taxes** assessed on real property shall be a **lien** thereon from and including the **first** day **of April** in the year in which they are levied, until the same are paid.

This lien is not barred by time. **26,** 570 (42 N. W., 735). And the legislature has no power to release property from the payment of its due proportion. **10,** 68 (4 N. W., 968). Personal property cannot be sold for real estate taxes. **18,** 634 (26 N. W., 373); **25,** 57 (40 N. W., 595); **26,** 573 (42 N. W., 735).

4038. The **taxes** assessed upon **personal** property shall be a **lien** upon the personal property of the person assessed, from and after the time the tax books are received by the collector.

4039. When property is assessed to any person as **agent** for another, or in a representative capacity, such person shall have a **lien** upon such property, or any property of his principal in his possession, until he is indemnified against the payment thereof, or if he has paid the tax, until he is reimbursed for such payment.

4040. **Irregularities** in making assessments, and in making the returns thereof, in the equalization of property as now provided by law, shall not invalidate the sale of any real estate when sold by the county treasurer for delinquent taxes due thereon, nor in any manner invalidate the tax levied on any property or charged against any person.

27, 441 (43 N. W., 257).

4041. The following **defects,** omissions, and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceeding from and including the assessment and to and including the execution and delivery of the deed of property sold for taxes, shall be taken and deemed to be mere irregularities within the meaning of the preceding section. The failure of the assessor to take or subscribe an oath or attach one to any assessment roll; the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied, or charged against any property, or the valuation of any property, upon any record; the failure to make or serve any notice mentioned in this act, except the notice mentioned in section 123 of this act [4022]; the failure or neglect of the county treasurer to offer any real estate for sale for delinquent taxes thereon at the time provided by law, provided the same be not sold sooner than is provided by this act, and the failure of the treasurer to adjourn such sale from time to time as required by law, or any irregularity or informality in such adjournment; the failure of the county treasurer to offer any real estate for sale at public sale which may afterwards be sold at private tax sale, and any irregularity or informality in the manner or order in which real estate may be offered for sale at public sale; the failure to assess any property for taxation, or to levy any tax within the time provided by law, and any irregularity, informality, or omission in any such assessment or levy; any defect in the description upon any assessment book, tax collector's book, or other record of any real or personal property assessed for taxation, or upon which any tax is levied, or which may be sold for taxes, provided such description be sufficiently definite to enable the county treasurer, tax collector, or other officer, or any person interested, to determine what property is meant or intended by the description, and in such case a defective or indefinite description on the assessment or collector's book, or in any notice or advertisement, may be made definite by the treasurer in the deed by which he may convey such property if sold for taxes, by conveying by a proper and definite description the property so defectively or indefinitely described; any other irregularity, informality, or neglect, or omission on the part of any officer, or in any proceeding, whether mentioned in this section or not; the neglect or omission to tax or assess for taxation any other person or property; the over-taxation of persons or property liable to be taxed, including in an assessment a tax for an illegal purpose.

4042. That when any **corporation** doing business in this state shall fail or neglect to pay any **tax** assessed or charged against it, when the same shall become **delinquent,** it shall be lawful for the county treasurer to notify any agent or officer of said company in the county where such tax is delinquent, that the same is delinquent, and the amount due, and shall further notify such officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer, and if such agent or officer shall fail to so pay over said moneys to the county treasurer, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars.

4043. **No injunction** shall be **granted** by any court or judge in this state, to restrain the collection of any tax, or any part thereof, hereafter levied, nor to restrain the sale of any property for the non-payment of any such tax, except such tax, or the part thereof enjoined, be levied or assessed for an illegal or unauthorized purpose; **nor** shall any person be permitted to recover by **replevin,** or other process, any property taken or distrained by the county treasurer, or any tax collector, for the non-payment of any tax, except such tax be levied or assessed for illegal or unauthorized purpose; but in every case the person or persons claiming any tax, or any part thereof, to be for any reason invalid, who shall pay the same to the county treasurer, tax collector, or other proper authority, *may proceed in the following manner, viz.: *First*—If such person claim the tax, or any part thereof, to be invalid for the reason that the property upon which it was levied was not liable to taxation, or that said property has been twice assessed in the same year and taxes paid thereon, he may **pay** such **taxes under protest** to the tax collector, county treasurer, or other proper authority, and it shall be the duty of the collector, treasurer, or other proper authority receiving such taxes, to give a receipt therefor, stating thereon that they were paid under protest, and the grounds of such protest, whether not taxable, or twice assessed, and taxes paid thereon. If such taxes are paid to the proper authority, other than the county treasurer, such person so receiving them shall, within ten days thereafter, deliver such taxes, or so much thereof as are paid under protest, to the county treasurer, together with a copy of the receipt given for the same, and the county treasurer shall retain the money so paid under protest until otherwise directed by order of the county board. Within thirty days after paying such taxes, the person paying them shall file a statement in writing, duly verified, with the county board, setting forth the amount of tax paid under protest, the grounds of such protest, and shall attach thereto the receipt taken for said taxes. Whereupon at the first meeting of the **county board** thereafter, they shall inquire into the matter, and if they shall find either that the property upon which such taxes were levied was not liable to taxation, or that it had been twice assessed in the same year, and taxes paid thereon, they shall issue an order to the county treasurer to **refund** said **taxes,** stating therein what sum shall be refunded, and if they shall find that the grounds of such protest are not true, they shall issue an order to the county treasurer to dispose of said money in the same manner as though it had not been paid under protest. **Appeals** may be taken from such decisions in the same manner and within the time set forth in sections 37 and 38, chapter 18, of the Compiled Statutes of Nebraska [881-2]; and if such an appeal be taken, the treasurer shall retain such taxes until the case is finally determined; *Provided,* That he shall in all cases retain said money until the time for an appeal shall have elapsed. If an appeal from the decision of the county board be taken, and upon the final determination thereof their decision be affirmed, the treasurer shall at once carry the order of said board into effect; and if their decision be reversed, they shall issue a new order to the treasurer conforming to the decree of the court finally determining the case. In all cases where the treasurer shall refund such taxes, he shall write opposite such taxes in the tax list the words, "Erroneously taxed—Refunded." The term county board, as used in this section, shall be held to mean board of county commissioners, and board of supervisors, as the case may be. *Second*—If such person claim the tax, or any part thereof, to be invalid for the reason that it was levied or assessed for an illegal or unauthorized purpose, or for any other reason, except as hereinbefore set forth, when he shall have paid the same to the treasurer, tax collector, or other proper authority, in all respects as though the same was legal and valid, he may, at any time, within thirty days after such payment, demand the same, in writing, from the treasurer of the state, of the county, city, village, township, district, or other subdivision, for the benefit, or under the authority, or by the request of which the same was levied, and if the same shall not be refunded within ninety days thereafter, may sue such county, city, village, township, district, or other subdivision, for the amount so demanded, and if upon the trial it shall be determined that such tax, or any part thereof, was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases.

All after * as it now reads added 1887, p. 580. For manner of proceeding in protest under former law see **14**, 54 (15 N. W., 539). The notice must be as full as petition in court. **25**, 63 (40 N. W., 597). Sidewalk tax imposed by a village is not one for "an illegal or unauthorized purpose." **27**, 435 (43 N. W., 257). Taxes paid to the wrong officer may be recovered. **28**, 747 (45 N. W., 163). Injunction will lie to restrain treasurer from selling real estate when it appears that the delinquent has personal property out of which taxes may be realized. **4**, 149; overruling **2**, 377. Injunction will not be granted unless tax is either void or its enforcement decidedly inequitable. **11**, 344 (7 N. W., 859). Where a part is legal and a part is illegal, injunction will not lie. **7**, 498. Taxes levied without authority of law may be enjoined. **13**, 235 (13 N. W., 206). Held void in part. An absolutely void tax need not be paid under protest, but may be enjoined. **25**, 817 (41 N. W., 796). See **6**, 66; **19**, 489 (26 N. W., 385).

4044. When any **demand to refund** taxes paid is made upon any treasurer, as provided in the second method of procedure indicated in the preceding section, such treasurer shall transmit a copy of the same to the authorities authorized by law to audit and pay accounts against the state, county, city, township, district, or village, as the case may be, who shall pass upon the same as upon any other claim, but no claim for refunding such taxes shall be paid, unless it appears to the satisfaction of such authorities that the same was levied for an illegal and unauthorized purpose.

Amended and portion of old act omitted. 1887, p. 583. County not liable for illegal school and other taxes collected and paid over by its officers. 18, 199 (24 N. W., 705).

4045. **No county** or township board, city council, or village trustee shall have power to **release**, discharge, remit, or commute any portion of the **taxes** assessed or levied against any person or property within their respective jurisdictions, for any reason whatever. And any taxes so discharged, released, remitted, or commuted may be recovered by civil action from the members of any such board, council, or trustees, and the sureties on their official bonds, at the suit of any citizen of the county, township, city, or village, as the case may be, and when collected shall be paid into the proper treasury. Nothing in this section contained shall be construed to prevent the proper authority from refunding taxes paid, as provided in sections 144 and 145 of this chapter [4043-4], nor with the powers of any officers, or board, sitting as a board for the equalization of taxes.

Amended 1887, p. 584. Cited, **14**, 526 (16 N. W., 756).

4046. Whenever it shall appear from the return of the treasurer that any person charged with **taxes** on personalty has removed out of the county, or has deceased and left no property out of which the taxes can be made, or if from any other cause it be impossible to collect such taxes, it shall be the duty of the county commissioners to cause the same, after the expiration of two years, in which time the treasurer shall use due diligence to collect the same, to be **stricken from** the **tax list,** and the county clerk shall certify the amount so stricken off to the auditor, who shall credit the county therewith in adjustment of the accounts of the county treasurer.

4047. A list of **lands** becoming **taxable** for the **first time** in each county of the state shall be procured by the state auditor from the proper land officers, at the best prices for the state, and a list of the lands becoming so taxable in each of the several counties shall be forwarded by the auditor to the county clerk of each county on or before the fifteenth day of January of each year.

4048. Each county treasurer is required to keep a book called the "**warrant book,**" in which he shall enter every state, county, or other warrant or order by him paid, or received in payment of taxes, from township collectors or any other person, specifying the date at which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was drawn, the sum for which it was received, and the interest due thereon, and the treasurer shall keep his account of warrants and orders by him received for and on account of taxes, separate and distinct from such as are by him paid in cash.

4049. When the county **treasurer** of any county shall **pay** any county **warrant** drawn on him by the county board, or when he shall take or receive any such warrant in payment for any tax, he shall write on the face of such warrant, "redeemed," and the date of redemption, and shall sign his name thereto.

4050. **No** county, city, township, or village **treasurer** or collector of taxes shall either directly or indirectly contract for or **purchase** any **warrant,** or order, or orders issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant, or order, or orders; and if any county, city, township, or village treasurer or collector of taxes shall so contract for or purchase any such order or warrant, he shall not be allowed in settlement the amount of said order or warrant, or any part thereof, and shall also forfeit the whole amount due on such order or warrant, to be recovered by civil action, at the suit of the state of Nebraska, for the use of the school fund of the county.

4051. A **tax** of thirty dollars, for state purposes, shall be levied on each **peddler** of watches, clocks, jewelry, or patent medicines, and all other wares and merchandise, for a license to peddle throughout the state for one year.

4052. Such **license** may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof, and taking his receipt therefor.

4053. Any person so **peddling without** a **license** is guilty of a misdemeanor, and the person actually peddling is liable, whether he be the owner or not, and upon conviction thereof shall be **fined** the sum of fifty dollars and stand committed until the fine is paid or he be discharged as provided by law; and if any peddler refuses to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produces a license upon trial, such peddler shall pay all costs of prosecution.

4054. On or before the first day of October, annually, and at such other times as the county board may direct, the county **treasurer** shall **make** out and file with the county clerk a **statement** in writing, setting forth in detail the name of each person charged with personal property tax which he and other collectors have been unable to collect, by reason of the removal or insolvency of the person charged with such tax, the value of the property and the amount of tax, the cause of inability to collect such tax, in each separate case, in a column provided in the list for that purpose. Said treasurer shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate, and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of the several taxes and special assessments, and cause of error. The truth of the statement contained in such lists shall be verified by affidavit of the county treasurer.

Cited, **12**, 637 (12 N. W., 114).

4055. If any lands or lots shall be delinquent for taxes or special assessments, the treasurer shall be entitled to a credit in his final settlement for the amount of the several assessments thereon, the county to allow the amount of printer's fees thereon, and be entitled to said fees when collected. *The county **treasurer** shall **settle with** the **board** of county commissioners on Wednesday after the first Tuesday in January, and on the first Monday in July in each year, and at such other times as the county board may direct, at which times the county treasurer shall file with the county clerk a statement showing the amount of money collected since last settlement, from what source derived, and amount of moneys paid out, and for what purpose, together with the vouchers for same, the amount of taxes due and unpaid, and the amount of money on hand belonging to the several funds;* *Provided*, That the county treasurer shall not be entitled to credit for delinquent personal property tax until he has filed with the clerk an affidavit that he has been unable to collect the tax due thereon by reason of a want of personal property of the owner thereof, and that to the best of his knowledge and belief no personal property of any such owner is in the county.

Amended and all from * to * inserted 1883, p. 282. It is only where the county board has failed to settle with and allow the treasurer credit for such property as he is unable to collect or for errors in the assessment of real estate, or footings of tax books, that the county clerk has authority to examine such lists and correct the same. **14**, 290 (15 N. W., 714). Cited, **12**, 638 (12 N. W., 114).

4056. If there be **no session of** the county **board** held at the proper time for settling and adjusting the accounts of the county treasurer, it shall be the duty of the treasurer to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as said board is required to do. Said county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessments returned, for which the collector is entitled to credit.

4057. The county **clerk** shall immediately, in either case, **certify** to the **auditor** of public accounts the **valuation** of property and the amount of state taxes thereon, for which the treasurer may be allowed credit.

4058. The county **clerk** shall also at the same time **certify** to the several authorities or persons with whom the county treasurer is to make settlement, showing the valuation of property and amount of taxes and special assessments due thereon allowable to said treasurer in the settlement of their several accounts.

4059. The auditor and other proper authorities or persons shall, in their **final settlements** with the treasurer, allow him credit for the amount so certified; *Provided*, That if the auditor or such other proper authorities or persons shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he or they shall return the same for correction; and when the same shall appear to be necessary, in the opinion of the auditor or such other proper authorities or persons, he or they shall designate and appoint some competent person to examine the treasurer's books and settlement, and the person so designated and appointed shall have access to the treasurer's books and papers appertaining to such treasurer's office or settlement for the purpose of making such examination.

County board has authority to employ competent persons to examine accounts of treasurer, and where such appointment has been made and services rendered, necessity for appointment will be presumed. **12**, 640 (12 N. W., 114). County board the sole judges of when the books should be examined. **16**, 34 (19 N. W., 637).

4060. In all cases when the **adjustment** is made **with** the county **clerk**, the county **board** shall, at the first session thereafter, **examine** such settlement, and if found correct shall enter an order to that effect; but if any omission or error is found said board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the auditor and other proper authorities or persons, who shall correct and adjust the treasurer's accounts accordingly.

4061. The county clerk shall make out and deliver to the county **treasurer**, as soon as adjustment is made with the county board or county clerk, annually, the statements, certificates, and lists appertaining to the settlement of the accounts of such treasurer; which statement, certificates, and list shall be made out in proper form, under his seal of office, on blanks which it is hereby made the duty of the auditor to furnish, annually, for that purpose. The treasurer shall deliver the same to the auditor and make a **final settlement** of his accounts on or before the first day of February in each year; *Provided*, That in all cases where the statements, certificates, and list appertaining to a final settlement of a treasurer are on file with the auditor, on or before the first day of February, the auditor shall not charge interest on the balance found due on the account of such treasurer, for fifteen days after mailing said auditor's statement showing balance due the state on such treasurer's account; *Provided further*, That this section shall not be held to relieve any collector from the payment of interest charged on his account by reason of failure to make payment to the state, at other time or times, as required by this or any other act of the legislature of this state.

4062. The county **clerk** shall **furnish** a duplicate copy of said **statement**, duly certified, whenever requested so to do by the **auditor.** If the statement of credits herein required, or any of the items therein, are objected to by the auditor, he shall return the statement to the county clerk, stating his objections, and said clerk shall examine and correct or explain the same satisfactorily and return the statement to said auditor.

4063. If any county **treasurer** shall have paid, or may hereafter **pay,** into the state treasury any **greater sum** or sums of money **than** are legally and justly **due** from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid on said warrant.

Even under this a specific appropriation must have been made by legislature. **18**, 222 (24 N. W., 683.

4064. The **treasurers** of the several counties shall **pay** into the state treasury all **funds** in their hands belonging thereto on or before the tenth day of February and tenth day of October in each year, and at such other times as the state treasurer shall require, and the funds so paid in shall be the identical state warrants, if any received by the treasurer for payment of the taxes, or in coin or in treasury notes of the United States.

Amended 1883, p. 283.

4065. Upon ascertaining the amount due to the state from any treasurer or other person, the **auditor** shall **give** such person a **statement** of the amount to be paid, and upon the presentation of such statement to the state treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid.

4066. Any **treasurer failing to pay** into the state treasury the amount due the state on his account for state and other taxes, at the time or times required by this act, shall pay **interest** at the rate of ten per cent per annum from the time the same became due until the same is paid; and it shall be the duty of the auditor to charge such interest to the account of every treasurer failing to pay at the time or times required by this act. In no case shall the auditor be permitted to remit such interest, unless satisfactory evidence from the county board is presented to him, showing, by official action taken by such board, lawful cause why the collector could not pay over, in part or in whole, the amount due on such treasurer's account with the state.

4067. Upon the **final settlement** of any account with the state, the **auditor** shall give the treasurer duplicate **certificates,** under his seal of office, setting forth that said treasurer has settled and paid into the state treasury the full amount due from him on said account; and it shall be the duty of the treasurer to file one of said certificates in the office of the county clerk, within twenty days after receiving the same. If any treasurer shall neglect or refuse to file one of said certificates as above required, the county clerk shall leave a written notice at the office of said treasurer, requiring him to appear before the county board at their next session, and show cause why he has not filed the certificate aforesaid; and if the treasurer shall not show that he has paid over the full amount due from him, and make a final settlement with the state and county, or that he has a lawful excuse for failing to do so, his office as treasurer shall be declared vacant by said board, and the same filled as in other cases of vacancy by reason of death or otherwise.

4068. The county **treasurer** shall report and **pay over** the amount of tax and special assessments due **to towns,** districts, cities, villages, corporations, and persons, collected by him, when demanded by the proper authorities or persons.

May be compelled by mandamus. **23,** 508 (37 N. W., 77).

4069. Any county **treasurer failing to make** reports and payments hereinbefore required for five days after demand made as aforesaid, the auditor, or such other authorities or persons, may bring suit upon the bond.

4070. If any county **treasurer fails to account** and pay over as required in the preceding sections, his office may be declared vacant by the county board, as provided in section 168 [4067].

4071. The **bond of** every county, town, or district **collector** shall be held to be security for the payment by such collector to the state treasurer, county treasurer, and the several cities, towns, and villages, and proper authorities and persons, respectively, of all taxes and special assessments which may be collected or received by him on their behalf, by virtue of any law in force at the time of giving such bond, or that may be passed or take effect thereafter.

The treasurer can only make final settlement by paying over the moneys that are in his hands. Delivery of certificates of deposit which are not paid is not sufficient, even though accepted by his successor as payment. **14,** 256 (15 N. W., 369).

4072. Upon the failure of any county treasurer to make settlement with the auditor, the **auditor** shall **sue** the **treasurer** and his sureties upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interests of the state.

9, 435 (2 N. W., 742, 892).

4073. When **suit** is instituted **in behalf of** the **state,** it may be in any court of record in this state having jurisdiction of the amount; and process may be directed to any county in the state. If any proceeding against any officer or person whose duty it is to collect, receive, settle for, or pay over any of the revenues of the state, whether the proceeding be by suit on the bond of such officer or person, or otherwise, the court in which such proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit on oath a full and fair statement of all moneys by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case, and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law to pay. And if, in a suit upon the bond of any such officer or person, he or his sureties, or any of them, shall not for any reason be liable upon the bond, the court may, nevertheless, give judgment against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to the form of the actions or pleadings.

4074. **Cities,** towns, villages, or corporate authorities, or persons aggrieved, **may prosecute** suit against any treasurer or other officer collecting or receiving funds, for their use, but [by] suit upon the bond, in the name of the state of Nebraska, for their use, in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the auditor or not. Cities, towns, villages, and other corporate authorities or persons shall have the same rights in any suits or proceedings in their behalf as is provided in case of suits by or in behalf of the state.

4075. When assessment rolls or collectors' **books,** in whole or in part, of any county, town, city, village, or district, shall be **lost** or destroyed by any means whatever, a **new assessment,** or new books, as the case may require, shall be made under the direction of the county board. Said board shall, in such cases, fix reasonable times and dates for performing the work of assessment, equalization, levy, extension, and collection of taxes, and paying over the same, or making new books, as the circumstances of the case may require. All the provisions of this chapter shall apply to the dates fixed by the county board, in the same manner that they apply to the dates for similar purposes, as fixed by this chapter. The county board is hereby fully empowered to select and appoint persons, where it may find the same necessary to carry into effect the provisions of this section.

4076. Whenever it shall come to the knowledge of the auditor that any county, township, city, district, or town, or any well defined locality thereof, or any particular class of property therein, may hereafter be released, from any cause whatever, from its just proportion of state taxes, said **auditor shall cause suit** to be commenced in an action of debt, in the name of the state of Nebraska, either against the municipality or against the property unjustly released from taxation, or the owners thereof, for the amount of such tax, in the supreme court of this state, and when judgment may be recovered in any such case, the auditor shall levy a rate of tax on the equalized valuation of all property or particular class of property in such county, township, city, district, town, or locality, as the case may be, as will pay the state the amount of such judgment and costs; and it shall be the duty of the county clerk of the proper county to extend such rate of tax with the state tax of the year directed in the auditor's certificate. Any county clerk neglecting or refusing to extend such rate, as certified to him by the auditor, shall be removed from his office, and in addition thereto shall be subject to a fine of $5,000 and damages caused by such neglect or refusal, to be sued for by the auditor, in an action of debt, in the name of the state of Nebraska, in the supreme court of this state; *Provided*, That in cases where the auditor and proper local authorities of the proper municipality can arrange to make such levy to reimburse the state in such cases, without suit, the auditor is hereby authorized to pursue such course.

4077. It shall be the duty of the **auditor** to **furnish** suitable **blanks** for the assessment of property, for the settlements by county treasurers with said auditor, and all other books and blanks required by this act, which shall be paid by the state out of any funds appropriated for that purpose. Such books and blanks shall be uniform, and the auditor shall from time to time furnish county officers with necessary instructions to carry the provisions of this act into effect, and all such instructions shall be strictly complied with by the officers in the performance of their respective duties. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the provisions of this act.

4078. The **owner of** any **certificate** or certificates of tax sale upon any tract of land or town lot shall be deemed to be the assignee and owner of all the liens for taxes of the state, county, city, village, township, district, and other municipal subdivisions for which such tract or lot was sold, and **may,** instead of demanding a deed therefor, as provided in this act, proceed by action at any time before the expiration of five years from the date of such certificate, to **foreclose** the same, and cause the tract or lot to be sold for the satisfaction thereof, and of all prior and subsequent taxes paid thereon, in all respects as far as practicable, in the same manner and with like effect as though the same were a mortgage executed to the owner of such certificate or certificates for the amount named therein, together with such subsequent and prior taxes paid thereon by the person having or owning the title to said land or lot adverse thereto. More than one certificate on the same property may be included in the same action, but each, together with prior and subsequent taxes paid thereon, shall be deemed and stated as a separate cause of action; *Provided*, That no action to foreclose any such lien shall be maintained unless the owner of any such certificate shall have served notice on the owner or occupant of the land mentioned therein within the time and in the same manner as provided in section 123 [4022].

Former laws relating to foreclosure of tax liens cited and discussed. Not necessary to bring action to test validity of tax deed before bringing action to foreclose tax lien. **11,** 377 (9 N. W., 477). Statute does not begin to run until title fails. If properly commenced, taxes back of the five years may be recovered. **16,** 297 (20 N. W., 347). Holder of defective tax deed may bring action to foreclose lien without first trying the validity of his title. **16,** 195 (20 N. W., 251). Where taxes are a valid charge on land, mere technicalities will not prevent the foreclosure of the lien. **16,** 400 (20 N. W., 641). One in adverse possession for ten years thereby acquires absolutetitle, free from liens of taxes existing prior to commencement of period. **27,** 834 (44 N. W., 30). Holder may join as many tracts or descriptions belonging to one defendant as he may see fit, but each tract will constitute a separate cause of action and should be separately stated and numbered. **14,** 564 (16 N. W., 837). If assessor failed to swear to assessment roll, the lien for taxes cannot be enforced. **14,** 585 (16 N. W., 837). See **21,** 83 (31 N. W., 256); **21,** 548 (32 N. W., 598).

4079. If the owner of any such certificate shall fail or **neglect** either **to demand a deed** thereon, or to commence an action for the foreclosure of the same, as provided in the preceding sections, within five years from the date thereof, the same shall cease to be valid or of any force whatever, either as against the person holding or owning the title adverse thereto, and all other persons, and as against the state, county, and all other municipal subdivisions thereof.

4080. In any case in which the plaintiff shall recover in an action for the foreclosure of **tax liens**, as provided in this act, he shall be entitled to **interest** on each amount paid by him, and evidenced by his certificates of tax sale and receipts for taxes paid, at the rate of twenty per cent per annum from the date of each payment for the term of two years, and at the rate of ten per cent per annum on each of said amounts from and after the expiration of said two years, and until the rendition of the decree of foreclosure, which decree shall draw interest as in other cases. At the time of the rendition of such decree the court shall award to the plaintiff an attorney's fee equal to ten per cent thereof, which shall be taxed as a part of the costs in the action.

4081. The **words** and phrases following, whenever used in this act, shall be **construed** to include in their meaning the definitions set opposite the same in this section, whenever it shall be necessary to the proper construction of this act:

1st. **Assessor—Assessors.**—Town, district, precinct, and deputy assessors.

2d. **Auditor.**—Auditor of public accounts.

3d. **Bank—Banker—Broker—Stock jobber.**—Whoever has money employed in the business of dealing in coin, notes, or bills of exchange, or in any business of dealing in or buying or selling any kind of bill of exchange, checks, drafts, bank notes, promissory notes, bonds, warrants, or other writing obligatory, or stocks of any kind or description whatsoever, or receiving money on deposit.

4th. **Collector—Collectors.**—County, town, district, and deputy collectors, including county, city, and township treasurers.

5th. **County board.**—The board of supervisors—the board of county commissioners.

6th. **Credits.**—Every claim or demand for money, labor, interest, or other valuable thing, due or to become due, not including money on deposit.

7th. **He.**—Male, female, company, corporation, firm, society, singular or plural number.

12th. **Real property—Real estate—Land—Tract—Lot.**—Not only the land itself, whether laid out in town or city lots, or otherwise, with all things contained therein, but also all buildings, structures, and improvements, and other permanent fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this act.

13th. **Shares of stock—Shares of capital stock.**—The shares into which the capital or stock of every incorporated company or association may be divided.

14th. **Tax—Taxes.**—Any tax, special assessments, or costs, interest or penalty imposed upon property.

4082. An **act** entitled "An act to provide a system of revenue," approved February 15, 1869, and all acts and parts of acts supplemental to and amendatory thereof, and all acts and parts of acts inconsistent with the provisions of this act, are hereby **repealed**; *Provided*, That such repeal shall not in any manner affect any rights heretofore acquired, or the collection of any taxes heretofore levied or assessed, or the validity of any sales for taxes heretofore made, or any right heretofore acquired under any law of this state.

Sec. 4083. "An act to provide for correcting **mistakes in the assessment** and taxation of property." 1873. In force February 27. G. S., p. 939.

4083. If on the assessment roll there be an **error** in the name of the person assessed, or any taxable property shall not be entered thereon, the name may be changed, and the property entered on the list by the assessor after the roll shall be returned to the county clerk; such error may be **corrected**, or the omission supplied, **by** the county **commissioners**. The county commissioners, upon being satisfied of such error or omission, shall, at a regular meeting of the board, make an order requiring the person to be affected to show cause, at a day to be therein appointed, why the error should not be corrected, or omission supplied, and his name and the property be entered on the tax list; such order shall be served upon the party, or posted up on the property thirty days before the day appointed therein for showing cause; if no cause, or no sufficient cause be shown to the contrary, the commissioners shall assess such property, and order such error corrected, or omission supplied, and the name of the person, and description of the property entered on the tax list, and the tax shall be collected as in other casses; but proceedings to correct such error or supply such omission must be instituted within six months from the time the taxes would, if regularly assessed, have become delinquent.

Secs. 4084 and 4085. "An act to provide for criminal liability and punishment of owners of personal property who shall remove the same from their usual place of business, use, or residence to avoid a listment for taxable purposes, or who shall fail to make such listment when said property shall be temporarily absent from said place of business, use, or residence." 1885, p. 313. In force March 4.

4084. That any person who shall remove personal **property** or cause the same to be **removed** from the precinct of his or her residence, or usual place of use or business, or place of keeping or deposit of the same, **for** the **purpose of avoiding listment** of said personal property for taxation, or any person who shall fail or refuse to list such personal property as required by law, when the same shall be temporarily removed from the precinct, place of residence of the owner, or other place where the same shall usually be kept or used, said owner, or agent of said owner, or either of them or in case of a corporation, the manager or other person in charge or possession of such property, shall on conviction be fined not exceeding one hundred dollars.

4085. The **words** "person" and "his or her," where they occur in the foregoing section, shall be **construed,** where the same is applicable, to mean any and all corporations who have personal property liable to taxation.

Secs. 4086 and 4087. "An act to make **taxes** a **perpetual lien** upon certain personal property from March 1 in each current year, and declaring the same personal for the purposes of taxation." 1877, p. 230. In force February 13.

4086. That **taxes upon** any and all **railroads** in this state, including roadbed, right of way, depots, side tracks, ties, and rails, now constructed or hereafter to be constructed, are hereby made a **perpetual lien** thereupon, commencing from the first day of March in each current year, against all claims or demands whatsoever of all persons or bodies corporate, except the United States and this state, and the above described property, or any part thereof, may be taken and held for the payment of all the taxes assessed against said railroad company in the several counties in this state.

4087. The **property** mentioned in the preceding section **is** hereby declared to be **personal** for the purpose of taxation and collection of the same.

Secs. 4088 and 4089. "An act concerning the **sale of lands for** the non-payment of **taxes.**" 1875, p. 93. In force February 25.

4088. Whenever it shall appear to the county commissioners of any county, that any tract of **land** or town or city lot in such county is **of less value than** the amount of **taxes** due upon it, it shall be their duty, at any meeting after said land or lot shall have been offered for sale and not sold for want of bidders, to fix a minimum price for the same, and certify the price so fixed to the county treasurer, and such land or lot shall be sold by said treasurer as other lands and lots are sold at "private sale," at not less than said minimum price, irrespective of the amount of taxes due upon it; and such **sale** shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which may remain after applying the amount for which it was held thereon.

4089. All lands and lots so sold shall be subject to **redemption,** and the purchaser thereof shall acquire title thereto in the same manner as other lands sold at tax sale in this state.

Secs 4090 to 4099. "An act to provide a **method of foreclosing tax liens** upon real estate in certain cases." 1875, p. 107. In force February 19.

4090. That **any person,** persons, or corporation, having by virtue of any provisions of the tax or revenue laws of this state a lien upon any real property for taxes assessed thereon, **may enforce such lien** by an action in the nature of a foreclosure of a mortgage for the sale of so much real estate as may be necessary for that purpose, and costs of suit.

See 5, 366.

4091. That any person, **persons,** or corporation holding or possessing any certificate of purchase of any real estate, at public or private tax sale, or any tax deed, shall be deemed **entitled to foreclose** such lien under the provisions of this act, within any time not exceeding five years from the date of tax sale (not deed) upon which such lien is based; *And provided,* That the taking out of a tax deed shall in nowise interfere with the rights granted in this chapter.

4092. **All petitions** for foreclosure or satisfaction of any such tax lien shall be filed in the **district court** in chancery, where the lands are situated.

4093. **Service of process** in causes instituted under this chapter shall be the same as provided by law in similar causes in the district courts, and where the owner of the land is not known, the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident: if the action is commenced against a person who disclaims the land, the land itself may be substituted by order of court for the defendant, and the action continued for publication.

4094. All **sales** of lands under this chapter, by decree of court, shall be **made** by a sheriff or other person authorized by the court, **in** the **county** where the premises or some part of them are situated.

4095. **Deeds** shall thereupon be executed by such sheriff, which shall vest in the purchaser, the same title that was vested in the defendant to the suit, at the time of the assessment of the tax or taxes against the same; and such deed shall be an entire bar against the defendant to such suit, and against all parties or heirs claiming under such defendants; and in case the land itself is made defendant in the suit, the deed shall be an absolute bar against all persons, unless the court proceedings are void for want of jurisdiction; the object and intent of this section being to create a new and independent title, by virtue of the sale, entirely unconnected with all prior titles.

4096. The **proceeds of** every **sale** made under a decree by virtue of this chapter, shall be applied to the discharge of the debt adjudged by the court to be due, and of the costs awarded, and if there be any surplus it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

4097. If such **surplus,** or any part thereof, shall remain in court for the period of three months without being applied for, the court may direct the same to be **put** out **at interest,** under the direction of the court, for the benefit of the defendant, his representatives, or assigns, to be paid to them by the order of the court; the party to whom said surplus shall be loaned to be designated by the court; and the sureties, upon which said money is loaned, to be approved by the judge.

4098. All **lands sold** by the sheriff by virtue of this act shall be **appraised,** advertised, and sold as upon execution, and the title conferred by his deed shall be entitled to all the presumptions of any judicial sale.

4099. This **act** shall be construed as **cumulative** and not exclusive, in respect to the remedy for enforcing liens and collecting delinquent taxes, by sale of property or otherwise, in the cases herein provided for, and shall in nowise interfere with, alter, or amend the existing revenue laws of the state.

Secs. 4100 to 4104. "An act to **authorize** county **commissioners** of any county to **foreclose tax liens** on real estate when the same have been purchased by them, and to authorize them to purchase such real estate at such foreclosure sales in the names of their respective counties, and to authorize any assignee of such tax liens to foreclose the same." 1881, p. 325. In force February 28.

4100. That in all cases whenever the county **commissioners** of any county in this state have purchased or shall hereafter purchase any real estate for taxes of any kind, delinquent for one year or more, and after the time of redemption from such sale has expired, they **may** in the name of their respective counties **proceed** by action, at any time before the expiration of five years from the date of such sale, **to foreclose** such certificates or liens in the district court of such county and to cause the tract or lot to be sold for the satisfaction thereof, and of all prior and subsequent taxes due thereon, in all respects as far as practicable in the same manner and with like effect as though the same were a mortgage, executed by the owner or owners of such real estate to the owner and holder of such certificate or liens for the amount therein expressed, together with such subsequent and prior taxes due thereon, and that at such foreclosure sales such county commissioners may, if they deem best, purchase in the name of their respective counties such real estate; *Provided*, That no action shall be brought and maintained by said commissioners unless the amount due on such certificates and for such taxes on said tract or tracts of land shall exceed the sum of two hundred dollars.

Latter part of this section held unconstitutional. *County v. Trimble*, **32**, (49 N. W., 938.)

4102. That any **assignee** of such tax certificate or tax lien **may foreclose** the same in the same manner and with like effect as in cases where such county commissioners may under the provisions of this act proceed to foreclose the same, and any person whomsoever may purchase such real estate at such foreclosure sale; *Provided*, That the limit prescribed in the proviso to the first section shall not apply to the assignees of any such certificate.

4103. That **no action** to foreclose such liens shall be maintained **unless** the **owner** of the land mentioned in such certificate, if a resident of the state or the county, shall be **served with** personal **notice** that such action will be commenced at least three months before the expiration of the time of redemption on such sale, and if a non-resident of the state, by publication for four consecutive weeks, the first time not more than five months and the last time not less than three months before the time of redemption shall expire, and such notice shall contain the same matter which is provided by law shall be embodied in the notice required by statute to be given to the owner or occupant of lands in cases when tax deeds shall be applied for by the purchaser or purchasers of such real estate at such tax sale.

4104. That such **real estate,** when ordered by the court in such action of foreclosure to be **sold,** shall be **appraised,** advertised, and sold, either by the sheriff or by special master commissioner appointed by the court, in the same manner as sales on foreclosure of mortgages are conducted, and that no such real estate shall be sold under such foreclosure for a less sum than two-thirds of the appraised value thereof.

Secs. 4105 and 4106. "An act to provide for the disposition of unclaimed moneys, in the hands of the county treasurer, collected as penalties on delinquent taxes." 1887, p. 585. In force July 1.

4105. That all moneys that may remain in the treasuries of the various counties of the state of Nebraska on the first day of October, A. D. 1887, and which have been collected as penalty on delinquent taxes under the act to provide a sytsem of revenue, approved March 1, 1883, shall on that day revert to and belong to the general fund of the several counties, when the same has been collected.

4106. On the first week of July, 1887, the county treasurer shall, by circular letter, notify all parties interested that unless they come forward and receive said amount, on or before October first following, the several amounts will revert to the general fund of the county.

Secs. 4107 to 4111. "An act to authorize certain county and municipal officers to purchase real estate at tax sale." 1879, p. 182. In force June 1.

4107. That at all tax sales provided for by law the county commissioners of the several counties of this state may purchase for the use and benefit, and in the name of their respective counties, any real estate therein advertised and offered for sale when the same remains unsold for want of other bidders. The respective county treasurers shall issue certificates of purchase of the real estate so sold in the name of the proper county. Such certificates shall remain in the custody of the county treasurer, and at any time the county commissioners may assign such certificates of purchase to any person wishing to buy for the amount expressed on the face of the certificate and interest thereon at the rate per cent which the taxes were drawing at the time of purchase, or for the total amount of all tax on such real estate. Such assignment may be made by the endorsement of the county clerk of his name on the back of each certificate, and such endorsement shall be made when requested by the county commissioners.

4108. Whenever the county commissioners of any county in this state have purchased any real estate in two successive years for delinquent taxes, or when there are three years or more of delinquent taxes due on any real estate, and the county commissioners have purchased the same for the delinquent taxes due thereon at a single sale, they may sell and assign the tax certificates issued upon such purchase for an amount not less than fifty per cent of the amount expressed in such certificates; **Provided*, That if such real estate shall consist of lot or lots in any city, town, or village in this state the taxes upon which have been delinquent for any three years and which so remain delinquent at the time of sale, the county commissioners may purchase such lot or lots at any time for the amount of such delinquent taxes without the interest, and may sell and assign the tax certificates therefor for an amount not less than fifty per cent of the amount expressed in such certificate.

Amended and all after * added 1881, p. 322. Legislature cannot authorize sale of certificates for less than amount due thereon if the property will bring it. 17, 45 (22 N. W., 114).

4109. That in case such real estate be within the corporate limits of any city or village, the city or village treasurer, or the collectors of taxes of such municipality, shall have the same power and is authorized to purchase any real estate in his city or village in like manner as the county commissioners may purchase as specified in section first of this act [4107]; and the said municipal treasurer may assign such certificates of sale (to be issued to him by the county treasurer on request) by the endorsement of his name on the back of each certificate, when ordered to do so by the city council or the trustees of his village, but no such certificate shall be issued to the city or village treasurer by the county treasurer when a certificate for the same tract or lot has been issued to the county commissioners.

4110. Whenever real estate is purchased by county commissioners, or by the city or village treasurer or collector, the county treasurer of the county wherein the real estate is situated shall not be obliged to account to the state treasurer, or to any person, for the amount of taxes due, until the county commissioners or city or village authorities have sold the certificate or certificates of purchase of the real estate sold. *And in all cases where such **certificate** or certificates of purchase of the real estate sold shall have been **sold** and assigned by the county commissioners for an amount not less than fifty per cent of the amount expressed in such certificates, and in all cases where real estate has been sold by the treasurer of a county at a minimum valuation, fixed thereon by the county commissioners in cases where the amount of taxes due exceeds the valuation of said real estate, and in all cases where the tax lien is foreclosed by the county commissioners, the county treasurer shall be required to account to the state treasurer, or any city treasurer or person, for the proportion only of the amount actually received due the state or otherwise, and the county treasurer shall receive credit for the full amount of the taxes charged up by the state, or city, or village against said county for said real estate.

All after *, as it now reads, added 1881, p. 324.

4111. Whenever there is more than one year's tax due upon city or village real estate, the **certificate** of purchase may be **assigned** by the municipal treasurer at not less than fifty per cent of the tax due, and when such certificate is assigned by the city or village treasurer, or collector, and not before, he shall pay to the county treasurer the due proportion of the state and county tax, and for the amount of the corporation tax, the city or village treasurer or collector may receive the indebtedness of such city or village.

Secs. 4112 to 4116. "An act to provide for the **payment of judgments** recovered against municipal corporations." 1867 (Ter.), p. 13. In force February 18.

4112. That whenever any **judgment** shall be obtained in any court of competent jurisdiction in this territory for the payment of a sum of money **against county**, township, school district, road district, town or city board of education, or against any municipal corporation, or when any such judgment has been recovered and now remains unpaid, it shall be the duty of the county commissioners, school district board of education, city council, or other corporate officers, as the case may require, to make provisions for the prompt payment of the same.

4113. If the amount of **revenue** derived from taxes levied and collected for ordinary purposes shall be **insufficient** to meet and pay the current expenses for the year in which the levy is made, and also to pay the judgment remaining unpaid, it shall be the **duty of** the proper **officers** of the corporation, against which any such judgments shall have been obtained and remaining unsatisfied, to at once proceed and levy and collect a sufficient amount of money to pay off and discharge such judgments.

4114. The **tax** shall be levied upon all the taxable property in the district, county, township, town, or city, bound by the judgment, and shall be collected in the same manner and at the same time provided by law for the collection of other taxes.

The three last sections unconstitutional. *State v. Walsh*, 31, (48 N.W., 263.)

4115. The corporate **officers** whose **duty** it is to **levy** and collect taxes for the payment of the current expenses of any such corporation, against which a judgment may be so obtained, shall also be required to levy and collect the special **tax** herein provided for, for the payment of judgments.

4116. If any such corporate **authorities** whose duty it is, under the provisious of this act, to so levy and collect the tax necessary to pay off any such judgment, shall **fail**, refuse, or neglect to make provisions for the immediate payment of of such judgments, after request made by the owner, or any person having an interest therein, such officers shall become **personally liable** to pay such judgments, and the party or parties [interested] may have an action against such defaulting officers to recover the money due on the judgment, or he or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in this act; and when a proper showing is made by the applicant for said writ, it shall be the duty of the court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises shall conform to the rules and practice of said court, and the laws of this territory, in such cases made and provided.

See 8, 94.

Sec. 4117. "An act to provide for the collection of taxes in certain cases." 1889, p. 538. In force June 30.

4117. That whenever **town sites** have been located, surveyed, and laid out in this state under any law of the state or the territory of Nebraska, or under any law of the United States, and such town site, or any part thereof, has been **vacated** or abandoned as such, all **taxes** levied on the lots or subdivisions therein vacated may be **liquidated** by payment of the original amount of such taxes without interest or penalties.

Secs. 4118 to 4120. An act setting aside the **revenue arising from** the **taxation** of works of **international improvement** to pay the bonds issued to construct or complete the same." 1875, p. 110. In force February 20.

4118. That where any township, precinct, incorporated city or village in this state has heretofore or may hereafter issue any bonds to aid in construction or completion of any works of **internal improvement,** the **revenues** which shall arise from the taxation of such internal improvement shall be **set apart** forever to pay the interest and principal upon said bonds until the same shall be fully paid, and in the event that such revenues shall not be sufficient to pay such bonds at their maturity, such revenues shall still be set apart and shall be credited to the general fund required for such township, precinct, incorporated city or village, before such tax list is extended, until the same shall be fully reimbursed.

Amended 1889, p. 368.

4119. That at the time the county **commissioners furnish** the assessor with blank forms and notices necessary for the proper assessment of the property in the several precincts, they shall also furnish the assessor of each township, precinct, incorporated city or village with a **list** of all the property in such township, precinct, incorporated city or village for which such bonds have been issued; and the assessor shall assess such property separately and enter the same in a separate book, provided for that purpose; *Provided, however,* That railroads shall be assessed as now provided in section seventeen of chapter sixty-six of the General Statutes, entitled "Revenue" [3935].

4120. The treasurer having control of such revenues shall keep the same in a **separate fund** for the purpose aforesaid.

Sec. 4121. "An act providing for the **distribution of moneys** deposited in suits brought to enjoin the collection of taxes." 1875, p. 103. In force February 19.

4121. That in all suits heretofore or hereafter to be brought in any court to enjoin the collection of **taxes** in which the plaintiff may have **deposited in court** the amount of the tax or a part thereof in controversy to abide the final determination of the suit, and such final determination shall be in favor of the collection of the tax or a part thereof, the treasurer's defendant shall receive and receipt for such moneys; *Provided,* There shall first be paid to the attorney or attorneys for the defendant or defendants their costs, disbursements, and fees incurred in the defense of the suit and in case of a controversy in regard to such fee, then the amount claimed by such attorney or attorneys shall be retained by said clerk until the court shall have determined the amount, which such amount shall be paid over to such attorney or attorneys.

Secs. 4122 to 4125. "An act to provide for the **repayment of** moneys paid as **taxes** on lands, the title to which vests in the state, by persons holding such lands under contract of sale or by lease." 1879, p. 149. In force June 1.

4122. That moneys heretofore received by the county treasurer of the several counties within the state of Nebraska, on account of **taxes** levied **on lands,** the **title** to which vests **in** the **state** of Nebraska, from persons holding said lands under contract of sale or lease, shall be repaid without interest to persons who have paid the same, their heirs, executors, or assigns.

This act is not in conflict with the constitution. 12, 357 (11 N.W., 460, 542, 855).

4123. That said **moneys** shall be **repaid** by the respective county treasurers, on orders in that behalf, made by the county commissioners of the respective counties.

4124. That no orders shall be made by the county commissioners of any county for the repayment of money paid as aforesaid into the treasury, except upon the production of a **receipt** from the treasurer of the [county] acknowledging the payment of money as taxes as aforesaid, on lands owned by the state of Nebraska.

4125. The county commissioner[s] of any county where school lands have been wrongfully taxed and the **taxes** have not yet been paid, shall order the county **treasurer** to **cancel** the same.

II. BONDS.

Secs. 4126 to 4130. "An act to provide for the establishment of a **fiscal agency** for the state of Nebraska in the city of New York, and prescribing the duties of officers in relation thereto." 1875, p. 163. In force February 25.

4126. The **governor** is hereby authorized to **designate** some bank in the city of New York as the state agency for the payment of bonds and coupons issued by the state or any county, township, precinct, city, or school district, which are by their terms made payable in said city.

4127. Before establishing and designating such **agency,** the governor shall require such agency to **give** a **bond** in double the amount of moneys which said agency may have in its custody at any time, such bond to be approved by the governor and auditor, and filed in the office of secretary of state.

4128. The state treasurer and such other **officers** as are by law designated for the purpose, are required to **remit** to the state agency, at least ten days before the day of maturity of any bonds or coupons payable in New York city, sufficient **moneys** out of the tax collected for the purpose, **for** the **redemption** of such bonds and coupons, and in addition thereto, a commission not exceeding one-eighth of one per cent for the disbursement of the same, and all expenses for such commissions, exchange, and postage, shall be a proper charge against the state, county, city, township, precinct, or school district, for which such moneys are remitted, and shall be allowed the treasurer in his settlement.

4129. On the **receipt** of any funds by the state agency it shall be the duty of such agency to notify the officer from whom received, of the receipt thereof; and immediately on the payment of such bonds or coupons for which funds were remitted, said coupons or **bonds** shall be **canceled,** and returned to the officer from whom such funds were received.

4130. It shall be the duty of the state auditor, immediately after the passage of this act, and the establishment of the agency provided herein, to publish a **notice** of the same, in some paper of general circulation in the city of New York for two weeks, and thereafter, all bonds and coupons of the state, or any county, city, township, precinct, or school district in the state, which are by their terms payable at any particular bank in said city, shall be paid at such agency.

Secs. 4131 to 4135. An act to provide for the funding of all outstanding warrants and other indebtedness of the state." 1877, pp. 120 and 132. In force February 14.

4131. That for the purpose of funding the foregoing indebtedness, the governor and secretary of state be and they are hereby authorized and required to issue the lithographed coupon bonds of the state of Nebraska, to the amount of five hundred and sixty-six thousand, three hundred and sixty-nine dollars and thirty-eight cents, payable twenty years after April 1st, 1877, with interest at eight per cent per annum, said interest payable semi-annually on the first day of October and April of each year thereafter. Principal and interest of said bonds shall be payable at the treasury of this state. Said bonds to be of the denomination of not more than one thousand dollars each, and the same with coupons, shall be payable to bearer. Said bonds, when issued, shall be registered by the auditor of public accounts, in a book kept for that purpose in his office, and when so registered and certified by him under his seal of office to have been regularly and properly issued, and that the signatures thereto are genuine, shall be sold in the manner following, to-wit: *First*—To the permanent school fund of this state, to an amount sufficient to take up the said certificates of indebtedness now held by said fund issued as hereinbefore set forth. *Second*—To the permanent school fund of this state, to an amount sufficient to invest whatever funds may be in the treasury of the state on the first day of April, 1877, belonging to said fund and proper to be invested, it being the intention to give preference to said school fund to invest its moneys in the bonds hereby required to be issued, before the same shall be offered for sale in open market. It shall be the duty of the board of commissioners named in section one of article eight of the constitution to invest the said moneys in said bonds, as hereinbefore provided. And whatever amount of said bonds shall be purchased by the said school fund shall be without premium. Any and all bonds so as aforesaid purchased by the said school fund shall be and remain the property thereof. *Third*—If any bonds shall then remain unsold it shall be the duty of the state treasurer to advertise for bids therefor, in one daily newspaper in the city of New York, Omaha, and Lincoln, for at least thirty days prior to any sale thereof; all bids shall be sealed and remain unopened until the day of sale as mentioned in said advertisment. Upon the day of sale the treasurer shall open any and all bids, and in connection with the governor and auditor of public accounts shall examine the same and award the said bonds or any thereof to the best and highest bidder therefor, but in no event shall any of said bonds be sold at a discount. Persons or corporations owning any of said warrants or certificates of indebtedness may be bidders therefor; *Provided*, No bid shall be received for a less sum than one thousand dollars; and in awarding the said bonds at such sale, the said officers shall take into consideration that fact, and shall give preference to the creditors of the state; *Provided*, Such bids be of equal advantage to the best interests of the state. Upon the sale of said bonds, if the bid of any person holding any of such warrants or certificates of indebtedness be accepted, the said warrants or certificates shall be received by the treasurer in exchange for said bonds; if such bids be awarded to other persons, cash only shall be received in exchange therefor. Such sale of said bonds with the coupons attached shall take place at the treasury of the state, on or before the first day of April, 1877, and thereupon it shall be the duty of the said treasurer to pay all of said warrants and certificates, together with interest thereon, as herein provided, out of the sales of said bonds when presented to him for payment; *Provided*, That all interest shall cease on any of said warrants or certificates if not presented for payment on or before the first day of May, 1877.

Auditor no authority to order treasurer to deduct from certificates any sum of money. 6, 515.

4132. The treasurer of the state shall be the **custodian** of all bonds purchased by the permanent school fund as aforesaid.

4133. The principal and interest accruing on said bonds shall be **payable in** the **currency** of the United States, from the sinking fund; the coupons upon payment shall be canceled by the treasurer.

4134. Upon the exchange or payment of such **warrants** and certificates as herein provided, the auditor of public accounts and treasurer shall cancel the same by writing across the face of each warrant and certificate the words "canceled by act of the legislature," giving the date of the approval of this act, and sign their names to such **cancellation**, and said treasurer shall report to the next regular session of the legislature his doings, under the provisions of this act.

4135. Any **person offending** against the provisions of this act shall be deemed guilty of a felony, and shall be punished by fine not less [than] $5,000 and not more than $10,000, and by imprisonment in the state prison not less than five years, and not more than ten years, in the discretion of the court pronouncing sentence.

Secs. 4136 to 4148. "An act for the issuing of **state bonds for** the purpose of providing **supplies** for the citizens of counties suffering from the loss of their crops during the year 1890." 1891, p. 302. In force March 5.

4136. That the governor and secretary of state be and they are hereby authorized and required to issue the **bonds** of the state to the **amount** of one hundred thousand dollars, payable five years, with interest at four (4) per cent per annum, payable annually on the first day of January of each year; principal and interest **payable** at the office of the state treasurer of the state of Nebraska, at Lincoln, Nebraska; said bonds shall be of the denomination of one thousand dollars each.

4137. The governor shall nominate, and by and with the advice and consent of the senate shall appoint nine persons, who shall be citizens of this state, and who are hereby constituted a **board of relief**, to whom the secretary of state shall deliver said bonds as soon as the same are issued; said board of relief shall dispose of said bonds and place the **proceeds** thereof in the state treasury, to be drawn out upon proper vouchers as fast as expended only; and be **used** in the purchasing of supplies and seed grain for distribution among the citizens of this state made destitute by the loss of their crops during the year 1890.

4138. The **auditor** of public accounts is hereby authorized and required, upon the presentation of proper vouchers, approved by the president and secretary of the state relief committee, **to draw** his **warrant** against the fund created by the sale of said bonds.

4139. It is hereby made the duty of said **commission** in the requisition for the funds set forth therein, to state the purpose for which said **money** to be paid by the treasurer is to be **used**, with an itemized **statement** of the several articles and kind of supplies to be purchased, and on the purchase of the same to file with the secretary of state an itemized **list** of all articles by them purchased for the relief of the western sufferers.

4140. It shall be and is hereby made the duty of said relief commission, through the **agency** of the county commissioners or board of supervisors, together with the county clerk and sheriff of the respective counties whose inhabitants require **aid, to distribute** the supplies by them purchased, as hereinbefore contemplated, to the county commissioners, clerk, and sheriff of the several counties requiring aid, and take the **receipt** of the commissioners and county clerk for said supplies thus furnished to the several counties through the commissioners, clerk, and sheriff of said counties, and from time to time file said receipts, together with all vouchers for supplies furnished, with the secretary of state; *Provided further*, That no **person** shall be **given relief** unless such person shall show by the affidavit of himself or the **affidavit** of two freeholders, residents of the county, who have personally known the applicant for relief for nine (9) months immediately preceding the passage of this act: *First*—That the applicant is and has been a *bona fide* resident of the county wherein the application is made for relief for more than nine months prior to the passage of this act. *Second*—That the applicant is without money or other means wherewith to provide such applicant the articles applied for. *Third*—That if seed is furnished applicant he will stay in the county, sow the same, and use every endeavor to raise a crop; *Provided further*, That said applicant shall comply with such additional rules and regulations as said board of relief may prescribe.

4141. *Be it further enacted*, That it shall be the duty of the several **commissioners** of the respective counties in the drouth stricken districts, or the board of supervisors of the counties in case any of said counties are under township organizations, to receive said supplies and to **distribute** the same to the needy or suffering of their respective counties. That said county commissioners, or the several boards of supervisors, shall be and are hereby made responsible on their official **bonds** for the faithful and proper distribution of all funds and supplies coming into their hands through the agency of the state relief commission herein created, or by donation through private sources. And it is further made the duty of said several boards of county commissioners, and clerk of the respective counties, or of the township organization, in counties under township organization, to keep a full, complete, and **itemized record** of all supplies, funds and merchandise and articles of every kind, name, or nature distributed by them to the suffering poor, and to whom distributed, and in what quantity, and the date of such distribution. *And be it further enacted*, That it is hereby made the duty of said county commissioners and board of supervisors herein referred to to **report** at least once a week by an itemized and detailed statement of all the funds by them received and of the merchandise and articles of every kind for the relief of the suffering to the state relief commission hereby created. Said report shall set forth in detail an itemized statement of all supplies distributed, to whom distributed, and date when delivered, and, when they are distributed to families, to give the number in the family receiving relief, which statement shall be filed with the secretary of state by the state relief commission hereby created, and by said relief commission reported in their monthly reports, which they are hereafter required to make to the secretary of state.

4142. Said state **relief commission** hereby created is authorized to use in paying the actual **expenses** for carrying into effect the provisions of this act not to exceed two and one-half (2½) per cent of the amount of money drawn by them from the treasury and hereby appropriated for the relief of the sufferers hereinbefore referred to.

4143. It is hereby made the duty of said **relief commission** thus created to keep an **itemized** and accurate **account** of all funds and moneys by them received from the state, or from any other source, or by private donation for the relief of the sufferers hereinbefore mentioned, which record shall at all reasonable hours be open for the inspection of the public. *And be it further enacted*, That the said state relief commission hereby created shall keep an itemized account, and a full, correct and accurate record of all supplies by them disbursed, to whom disbursed, and file the proper vouchers therefor in their **report** hereafter required to be made. They shall also report the disposition made of all moneys by them received, whether from the state or from private individuals. They shall also keep and report all supplies, provisions, food, clothing of every kind, name, and nature by them received from private sources, and also what distribution was made of the same. And they shall from month to month, or as near as may be practicable, file a full itemized report of their actions and doings under the provisions of this bill with the secretary of state.

4144. All **officers** mentioned in this bill shall be, and are hereby held **responsible** upon their official bonds for all items of property, money, or anything of value coming to their hands for the relief of the sufferers provided for in this bill.

4145. Be it further enacted that the **treasurer** of the state relief commission hereby created shall give **bond** in the sum of forty thousand dollars ($40,000) to the state of Nebraska for the faithful performance of his duty under the provisions of this act, and for the distribution of all funds, property, and moneys coming into his hands for the sufferers in accordance with the provisions of this act. Said bond to be approved by the secretary and president of the commission.

4146. For the purpose of **paying** the annual interest and principal of the **bonds** when the same become due, there shall be levied and collected a **tax** of one-eighth ($\frac{1}{8}$) of one mill on the dollar valuation of the grand assessment roll of the state for the purpose of creating the fund known as the state relief fund, which shall be levied annually by the state board of equalization in addition to all other **taxes** levied for state general purposes.

4147. That **only** so much of the **money** above provided for shall be expended as may be found actually **necessary** to accomplish the purposes of this act.

4148. When a **sworn complaint** shall be made to the state relief board that the supplies are improperly distributed, it shall be the duty of said board to **investigate** the complaint and if sustained they are hereby empowered to place the **distribution** of relief in the hands of such county officers or other persons as they may deem best.

Secs. 4149 to 4151. "An act to provide for the registration of county, precinct, city, or school district **bonds** heretofore **voted but not issued.**" 1879, p. 177. In force June 1.

4149. It shall be the duty of the proper **officers** of any county, township, precinct, city, or school district in which any bonds, issued for work of internal improvement, have been heretofore voted under the authority of any law of this state, before the issuance of such bonds, to make a written **statement of** all **proceedings** relative to the vote upon the issuance of such bonds, the notice of the election, manner and time of publication, questions of submission, results of a canvass of the vote on the proposition on account of which it is proposed to issue such bonds, together with a full statement of the assessed valuation and total bonded indebtedness of the county, as well as the assessed valuation and total bonded indebtedness of the township, precinct, city, or school district voting such bonds. Such statement shall be certified to under oath, by the proper board or city council, and be transmitted with the bonds proposed to be issued to the auditor of public accounts.

4150. The **auditor** shall **examine** the statement and bonds so submitted to him, and if he be satisfied that such bonds have been voted in conformity to law, and are in all respects in due form, he shall record the statement and **register** the **bonds** in his office, and no such bonds shall be issued or be valid unless they shall be so registered and have endorsed thereon a certificate of said auditor and secretary of state, showing that such bonds are issued pursuant to law, the data filed in the office of said auditor being the basis of such certificate.

4151. Upon the **registration** of such bonds aforesaid, the auditor of public accounts shall certify the fact to the proper officers of such county, city, township, or school, or school district, whose duty it shall be to enter the same upon the records of the county, city, or township, as the case may be, and taxes for the payment of such bonds and the interest thereon shall be levied in the manner provided by law.

Secs. 4152 to 4156. "An act to authorize counties, precincts, townships, or towns, cities, villages, and school districts to compromise their indebtedness and issue new bonds therefor." 1887, p. 100. In force June 1.

4152. That any county, precinct, township, or town, city, village, or school district is hereby authorized and empowered to compromise its indebtedness in the manner hereinafter provided.

4153. Whenever the county commissioners of any county, the city council of any city, the board of trustees of any village, or school board of any school district shall be satisfied by petitions or otherwise that any such county, precinct, township, or town, city, village, or school district is unable to pay in full its indebtedness, and two-thirds (⅔) of the resident taxpayers of such county, precinct, townships, or towns, city, village, or school district shall by petition ask that such county, precinct, township, town, city, or village, or school district, to compromise such indebtedness, they are hereby empowered to enter into negotiations with the holder or holders of any such indebtedness of whatever form, scaling, discounting, or compromising the same.

4154. Whenever satisfactory arrangements are made with the holder or holders or any of them of such indebtedness, and upon a surrender of the same for cancellation or satisfaction, the county commissioners for and on behalf of any such county, precincts, townships, or towns, or the city council of any such city, or the board of trustees of any such village, or school board of any such school districts shall, upon petition of two-thirds (⅔) of the resident taxpayers of such county, precinct, township, or town, city, village, or school district have authority and they are hereby empowered to issue the bonds of such county, precinct, township, or town, city, village, or school district to the holder or holders of the indebtedness so surrendered canceled, or satisfied for the amount agreed upon, not exceeding the original indebtedness.

4155. Before issuing bonds under the provisions of this act the board issuing the same shall by resolution enter upon its records, recite the number and denomination of the bonds to be issued, the rate of interest and to whom and when payable. Such bonds shall be payable in not more than twenty (20) years from the date of their issue or at any time before maturity at the option of such municipality. They shall bear interest at a rate not exceeding seven (7) per cent nor the rate borne by the bond surrendered, with interest coupons attached, payable annually or semi-annually, and the said board may levy a tax on all the taxable property in such county, precinct, township, or town, city, village, or school district in addition to other taxes to pay the interest and principal of said bonds as the same shall mature, and such tax levy for interest may be paid in cash or in such coupons.

4156. Every board issuing bonds under the provisions of this act shall keep a complete record of all the transactions connected therewith.

Sec. 4157. "An act authorizing the auditor of public accounts, before registering the bonds of any municipality, to detach any or all coupons that shall mature before the taxes levied for the payment of the same shall become due." 1889, p. 429. In force March 30.

4157. That whenever a bond of any county, city, town, township, precinct, village, school district, or other municipality, shall be presented to the auditor of public accounts for registration, the auditor shall examine the interest coupons thereto attached, and shall detatch as many of them as shall mature before the first taxes levied to meet the same shall become due and collectable, and stamp said **coupons** "Detached by the Auditor of Public Accounts," and send to the treasurer of the county from which said coupons were issued.

Secs. 4158 to 4166. "An act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds to aid in the construction or completion of works of **internal improvement** in this state, and to legalize bonds already issued for such purpose." 1869, p. 92. In force February 15. (Sec. 7 repealed 1885, p. 270.)

4158. That any **county** or **city** in the state of Nebraska is hereby authorized to issue **bonds** to aid in the construction of any railroad, or other work of internal improvement, to an amount to be determined by the county commissioners of such county or the city council of such city, not exceeding ten per centum of the assessed valuation of all taxable property in said county or city; *Provided*, The county commissioners or city council shall first submit the question of the issuing of such bonds to a vote of the legal voters of said county or city, in the manner provided by chapter nine of the Revised Statutes of the state of Nebraska, for submitting to the people of a county the question of borrowing money.

Acts of 1869 constitutional. **2,** 424; **10,** 280 (4 N. W., 991). Court house is not a work of internal improvement. **10,** 280 (4 N. W., 991). Water grist mill erected for public use is an internal improvement and bonds properly voted for it are valid. **14,** 329 (15 N. W., 690). Bridge bonds can be voted under this clause. **23,** 182 (36 N. W., 474). Construction of the word aid and definition of internal improvements. **4,** 453. Proposition submitted in alternative form; *held*, that issue of bonds would be enjoined at any time before passing into hands of innocent purchaser, but not after. **29,** 452 (45 N. W., 692). A proportion making the issuance of county bonds depend not only upon a vote of two-thirds of the electors of the county, but also upon the voting of bonds in a number of precincts of the county by a two-thirds vote of the electors of each of said precincts, is invalid. Mere fact that bonds were signed and sealed outside of county does not make them invalid. **13,** 139 (13 N. W., 5). Public donations to railroads can be made only by the people themselves by means of an election properly called and held; and the people cannot delegate to the county commissioners the authority to determine which of two companies shall be the recipient of the aid voted. **14,** 294 (15 N. W., 701). Mandamus to compel the payment of bonds, petition should show that the bonds were issued in aid and should particularly describe the improvements intended to be aided. **9,** 460 (4 N. W., 63). See **10,** 60 (4 N. W., 514).

4159. The **proposition** of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided*, That an additional amount shall be levied and collected to pay the principal of said bonds when it shall become due; *And provided further*, That no tax shall be levied or collected to pay any of the principal of said bonds until after the year 1880.

Amended 1870, p. 15.

4160. The proposition shall state the **rate of interest** such bond shall draw, and when the principal and interest shall be made payable.

4161. If **two-thirds** of the **votes** cast at any such election for the purposes therein set forth be in favor of the propositions submitted, the county commissioners, in the case of a county, and the city council, in the case of a city, shall cause the proposition and result of the vote to be entered upon the records of said county or city, and a notice of its adoption to be published for two successive weeks in any newspaper in said county or city, if there be one, and shall thereupon **issue** said **bonds,** which shall be and continue a subsisting debt against such county or city, until they are paid and discharged.

Former act required a majority vote only. Amended 1875, p. 87.

4162. It shall be the duty of the proper officers of such county or city to cause to be annually levied, collected, and paid to the holders of such bonds a **special tax** on all taxable property within said county or city, sufficient to pay the annual interest as the same becomes due; and when the principal of said bonds becomes due such officers shall in like manner collect an additional amount sufficient to pay the same as it becomes due; *Provided*, That when any bonds have been heretofore issued, such officers shall not levy or collect any amount more than may be necessary to pay the amount annually falling due by the condition of such bonds until after the year 1880; *Provided*, That not more than ten per centum of the principal of said bonds shall be collected in any one year, excepting where bonds have been heretofore issued, and by the conditions of such bonds are required to be paid in some other manner.

Amended 1870, p. 15.

4163. Any **county** or **city** which shall have issued its bonds in pursuance of this act shall be **estopped** from pleading want of consideration therefor, and the proper officers of such county or city may be compelled, by *mandamus*, or otherwise, to levy the tax herein provided to pay the same.

4164. All **bonds heretofore** voted and **issued** by any county or city in this state, to aid in the construction of any railroad or other work of internal improvement, are hereby **declared** to be **legal** and valid, and a lien upon all of the taxable property in such county or city, notwithstanding any defect or irregularity in the submission of the question to a vote of the people, or in taking the vote, or in the execution of such bonds, and notwithstanding the same may not have been voted upon, executed, or issued in conformity with law, and such bonds shall have the same legal validity and binding force as if they had been legally authorized, voted upon, and executed; *Provided*, That nothing in this section nor in this act shall be so construed as to legalize or in any way sanction any vote of the people of Nemaha county, heretofore had, for the purpose of aiding in the construction of any railroad, nor anything done by the county commissioners of said county authorizing said vote, or anything done by them in consequence of such vote.

4165. That after the year 1880 the officers of any county or city may **levy** and collect not exceeding 10 per centum of the principal of said bonds; *Provided*, Said bonds are not payable in installments not exceeding 10 per centum; and whenever any county, city, or precinct shall have on hand an amount exceeding two thousand dollars for the **payment** of the principal of said indebtedness, the corporate authorities of such county or city shall advertise for the surrender of any such indebtedness; and the person offering to surrender such indebtedness on the lowest and best terms shall receive the money, and surrender such indebtedness; and if at any time there shall have accumulated a sum exceeding ten thousand dollars, the same may be invested in Nebraska state stocks, or in United States stocks.

This and following section added 1870, p. 16.

4166. All **taxes** which have been paid to raise a sinking fund to pay the principal of such indebtedness, and now on hand, shall be **returned** to the person paying the same.

Secs. 4167 to 4169. "An act to authorize the issue of **county bonds** in certain cases." 1887, p. 224. In force June 1. As amended 1885, p. 270.

4167. That any county, precinct, or city in the state of Nebraska which has heretofore voted and issued bond or bonds to aid in the construction of any railroad or other work of internal improvement, and which bond or bonds, or any part thereof, still remain and are a legal liability against such county, precinct, or city, and bearing interest at a greater rate than seven (7) per centum per annum, is hereby authorized to issue coupon bond or bonds, bearing interest at a rate not exceeding seven (7) per centum per annum, to be substituted or exchanged for such bond or bonds heretofore issued, whenever such county, precinct, or city can effect such substitution, or exchange dollar for dollar; *Provided*, That no such **refund-**

ing bonds shall be issued except after four (4) publications of notice thereof in at least two weekly papers published in the county, by the duly constituted authorities of such county, city, village, or precinct, which notice shall recite the date, number, and denomination of the bonds sought to be refunded, and also of the bonds sought to be issued.

In registering and certifying such bonds, the auditor and secretary of state have no authority to review the action of their predecessors on the original bonds. In issuing such bonds no vote of the people is required. **14,** 281 (15 N. W., 365).

4168. The **new** bond or **bonds** so issued shall have recited therin the object of its or their issue, the whole of the act under which the issue is made stating the issue to be in pursuance thereof, and shall also state the number, date, and amount of the bond or bonds for which it is or they are issued, and such new bond or bonds shall not be delivered until the surrender of the bond or bonds so designated.

4169. The new bond or bonds so issued shall **not require a vote** of the people to authorize such issue, shall be paid and the levy be made and tax collected for payment of same in accordance with the laws now governing the said bond or bonds heretofore issued.

Secs. 4170 to 4179. "An act to authorize the registration, collection, and redemption of **county bonds.**" 1875, p. 169. In force February 25.

4170. That the officers of any county in this state, issuing bonds, shall make **registration** in a book kept for that purpose, of the notice of election, manner and time of publication, questions of submission, and adoption of the proposition on account of which such bonds were issued; also of the date, amount, number, maturity, when payable, and where payable, and the rate of interest, and when and where payable, of such bonds; and shall, at the time of issuing the same, make out and transmit to the auditor of state, a certified statement of such registry, which shall be attested by the county clerk, under his official seal. Then the auditor of state, upon the receipt of such statement, shall, in a book kept by him for that purpose, make a faithful record of the same.

4171. It shall be the duty of the clerk of each county in this state, within sixty days from the taking effect of this act, and at such other times as the auditor of state may request, to make out, certify, and transmit to such auditor a full and complete **statement of** the bonded **indebtedness** of every description of such county at the date of such statement, particularly setting forth the nature of such bonds, and for what the same were issued, which shall be entered of record by the auditor of state in the same manner as provided for in section one of this act. The county clerk shall receive the same compensation for his service rendered under the provisions of section one and two of this act, as are allowed by law for a copy of like records, to be paid by said county.

4172. Whenever the holder of county bonds shall present the same to the **auditor** of the state for **registration**, the auditor, upon being satisfied that such bonds have been issued according to law, shall register the same in his office, in a book to be kept for that purpose, in the same manner that such bonds are registered by the officers issuing the same, and shall, under his seal of office, certify upon such bonds the fact that they have been regularly and legally issued, and that such bonds have been registered in his office in accordance with the provisions of this act,* the data filed in his office being the basis of such certificate.

Amended 1887, p. 99, by omitting after * proviso allowing auditor one-fourth of one per cent fee. Where auditor by order of supreme court has certified that bonds were legally issued they will not afterwards be canceled for illegal issueing. **20,** 681 (31 N. W., 376). Auditor entitled to a fee of one-fourth of one per cent on refunding bonds. **16,** 110 (20 N. W., 27).

4173. When any of the bonds of any county shall be so registered, the **auditor** of state shall, annually, on or before the second Monday of June in each year, ascertain the amount of **sinking fund** and interest accrued, and to accrue before the tax for the next succeeding year shall be levied, upon all bonds registered in his office, and shall **certify** the **amount** thereof to the clerk of the county in which such bonds were issued, specifically setting forth the amount thus due, and to become due for such year.

4174. The clerk and recorder of any county, upon receiving such certified statement from the auditor of state, shall proceed to ascertain from the assessment roll of the county the amount of taxable property in such county, and what percentage is required to be levied thereon to pay the said interest and to create a **sinking fund**, in compliance with the certificate of said auditor; and when so ascertained, shall **levy** such percentage upon the taxable property of such county, and shall place the same upon the tax roll of the county, in a separate column or columns designating the purposes for which said taxes are levied, and the said taxes shall be collected by the county treasurer in the same manner that other taxes are collected.

A sinking fund tax is a tax raised for the payment of the interest and principal of a *public loan*, and cannot be levied for the payment of a floating indebtedness. **10**, 612 (7 N. W., 270).

4175. Upon the receipt of such moneys by the county treasurer, he shall, out of the same, at once proceed to pay off the **interest** accrued upon such registered bonds, at the place where such interest is made payable. The county treasurer shall cause to be surrendered the coupons for all interest thus **paid**, which coupons shall be filed with and canceled by the county clerk, and his receipt taken therefor and retained by said treasurer. The moneys thus collected and remaining in the hands of the county treasurer, after the payment of the said interest as herein provided, except a sufficient amount to pay the accruing interest upon such bonds for the current year, shall be retained as a **sinking fund** for the final redemption of such bonds, and shall be, by the county treasurer, when so ordered by the county commissioners, **invested** as follows, to-wit: *First*—In redeeming the bonds of the county issuing the same. *Second*—In the bonds of the state of Nebraska. *Third*—In the bonds of the United States, provided that the bonds thus purchased shall in all cases be purchased at the lowest market price, after twenty days' notice by publication in at least one newspaper published and in general circulation at the capital city or town of the state; the cost of which advertising, at legal rates, shall be paid out of the sinking fund for the redemption of such bonds.

4176. When the interest and principal, or interest only, of such registered bonds are payable in New York city, or elsewhere out of the state, **payment** shall be then made at the **place** so designated in such bond or coupon, or at the financial agency of the state for such purposes, and in order that the funds may not be misapplied, the county treasurer shall procure a draft for the amount, to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or at the request of the party holding or owning said bonds, payment may be made at the office of said treasurer.

4177. The tax and **funds** so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the county **treasurer** shall be **liable** on his official bond for the faithful disbursements of all moneys so collected or received by him.

4178. That when any registered **bonds** shall mature, the same shall be paid off by the county treasurer, at the place where the same are payable, out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the county treasurer on the face thereof, "**Canceled,**" together with the date of such payment, and thereupon be filed with the county clerk, who shall enter satisfaction of such bonds in the record where the same are registered. In case said bonds are payable out of the state, an allowance of one-fourth of one per cent shall be made to the county treasurer for the expense attendant in making such payment, to be deducted from any money in his hands remaining after payment of such matured bonds.

4179. The county treasurer and county clerk shall, when ordered by the county commissioners, publish a detailed **statement** of the business transacted by them under the provisions of this act.

FUNDING INDEBTEDNESS.

Secs. 4180 to 4189 formed secs. 132 to 141. 1879, p. 387.

4180. The county board of any county in the state of Nebraska are hereby authorized and empowered to issue coupon **bonds** of any denomination as they may deem best, sufficient to pay the outstanding and **unpaid** *bonds, warrants, and **indebtedness** of such county; *Provided*, That the county board of any county may limit the provisions of this subdivision to any fund or funds of said county; *Provided further*, That in no event shall bonds be issued to a greater amount than ten per cent of the assessed valuation of such county; *And provided further*, That the county board shall first submit the question of the issuing said bonds to a vote of the qualified electors of such county.

*"Bonds" added 1883, p. 191. Bonds issued on an election called before this act passed, and not within acts then in force, are void. **23,** 803 (37 N. W., 645). The sum of all bonds issued by the county cannot exceed ten per cent. **18,** 141 (24 N. W., 556). Bonds made payable on or before, may be refunded; but when an attorney proffers his advice, and claims to have discovered a means whereby he can save the county great expense, and makes a contract based on such discovery by which he is to make a large profit, such contract will be held void. **20,** 432 (30 N. W., 538).

4181. [**Conditions.**]—Any bonds hereafter issued under the provisions of this subdivision shall be for the payment, by the county issuing the same, of the sum specified therein, made payable at the office of the county treasurer, and to run not more than twenty years nor less than five years, with interest at a rate not to exceed seven per cent per annum, payable semi-annually; said bonds and coupons shall be signed by the chairman of the board, and countersigned by the county clerk of the county; *Provided*, That such bonds may be made redeemable at any time after five years, at the option of the county board.

4182. It shall be the **duty of** the county **board** of any county issuing bonds under the provisions of this subdivision to ascertain the highest price at which said bonds can be negotiated, and to embrace in the proposition submitted to the qualified electors under this act the minimum price at which said **bonds** shall be **sold**; *Provided*, That no bonds issued under the provisions of this subdivision shall be sold for less than their par value; **And provided further*, That where, by the issuance of the proposed bonds, the rate of interest on the said indebtedness will be reduced, and the amount of the indebtedness will not be increased, a majority of the votes cast shall be sufficient to adopt the proposition.

Minimum price of "eighty-five per cent" omitted, and all after * added 1883, p. 192.

4183. It shall be the duty of the board issuing bonds under the provisions of this subdivision to **negotiate** said **bonds,** and all the proceeds arising from the sale of said bonds shall be paid into the county treasury of said county, and shall be applied solely to the redemption and payment of the unpaid *bonds, warrants, and indebtedness of said county; *Provided,* That the county board of any county may exchange such bonds at not less than their par value, for the outstanding indebtedness of such county; *Provided further,* That no bonds shall be issued, for the purpose of such exchange, for a less sum than fifty dollars.

4184. Whenever said bonds are sold and the proceeds paid into the county treasury it shall be the duty of the county treasurer to immediately notify the holders of all *bonds, warrants, orders, certificates, or audited accounts intended to be redeemed and paid under the provisions of this act, and the holders of such *bonds, warrants, orders, certificates, or audited accounts, dated prior to the issuing of said bonds, shall present the same for payment, and the said county treasurer shall pay the same out of the funds so provided, and said treasurer shall forthwith cancel said *bonds, warrants, orders, certificates, or audited accounts so presented and paid, by writing across the face of each of them with red ink, plainly and legibly, the following words (properly filling the blanks): "Canceled from bond warrants bond funds this —— day of —— 18—. (Signed) ——, treasurer. (Signed) ——, holder."

4185. The treasurer of said county shall record in a book kept for that purpose a statement of all the bonds issued, giving the number, amount, date, to whom issued; and shall also keep and record in said book a statement of all the *bonds, warrants, orders, certificates, and audited accounts so as aforesaid taken, giving the number, date, amount of principal and interest, if any, to whom issued, by whom presented for redemption, and as often as he may be called upon by the said board so to do, he shall present a statement thereof, and of all his doings in the premises, to the said county board.

4186. The county board of any county issuing bonds under the provisions of this subdivision shall levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided,* That an additional amount shall be levied and collected sufficient to pay the principal of such bonds at maturity; *And provided,* That not more than twenty per cent of the principal of said bonds shall be levied and collected in any one year.

4187. The board shall have power, and they are directed so to do, to adopt such rules and regulations governing all officers and other persons in the the payment, redemption, cancellation, and destruction of such warrants, orders, certificates, and audited accounts as they deem necessary and sufficient to protect the interests of said counties in furtherance of the provisions of this subdivision.

4188. If any person or officer, contrary to the provisions of this subdivision, shall knowingly issue or deliver, or put in circulation, use, or in any manner dispose of, contrary to law, any warrant, order, certificate, or audited account, intended to be redeemed or paid under the provisions of this subdivision, either before or after the same has been paid or canceled, and thereby defraud, or attempt to defraud, any corporation, county, state, or person, he shall, on conviction, be fined not less than five hundred dollars, and be imprisoned in the penitentiary not less than six months nor more than three years.

4189. If any officer shall knowingly and willfully fail to perform fully and completely each and every act or duty required of him by this subdivision, he shall, on conviction, be fined in any sum not less than fifty dollars, nor more than five hundred dollars, or be imprisoned not less than ten days, nor more than sixty days, or both fined and imprisoned at the discretion of the court.

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* "Bonds" added 1883, p. 192.

Secs. 4190 to 4197. "An act to authorize counties to issue bonds for refunding their bonded indebtedness, and provide for registering and certifying the same, and for levying a tax to pay the interest and principal thereof." 1883, p. 194. In force February 27.

4190. That any **county** of this state is hereby authorized to issue its coupon bonds at a rate of interest not exceeding six per cent per annum, for the purpose of **refunding** its bonded indebtedness, said bonds to be substituted in place of and exchanged for **bonds** heretofore issued, whenever such county can effect such substitution and exchange, which substituted bonds shall equal the amount due for principal and interest of such bonded indebtedness, with interest payable semiannually, and the principal payable not exceeding twenty years from their date.

4191. The provisions of the foregoing section of this act shall apply to and include all **bonds heretofore issued** by any county which have been held and are determined to be valid and binding in the hands of *bona fide* holders thereof, in any action or actions thereon, or on any coupon thereof, by any state or federal court of competent jurisdiction within the state, and such bonds with the interest thereon constitute a bonded indebtedness within the meaning of this act.

4192. That in all cases where the **bonds** of any county are **past due**, and in all cases where counties have issued bonds that were redeemable at the option of the county board at a fixed time, and where said time has elapsed, the county board shall notify the holders of such bonds to present the same for **redemption**, or exchange and substitution, and in case of the refusal of such bondholders to present the same for redemption, or exchange and substitution, at the place where said bonds are made payable, the county shall not be liable to pay interest on said bonds in excess of the rate provided for as the interest of said refunding bonds, and such interest shall commence with the coupon next to become due after such notice has been given.

4193. That in case an exchange of said bonds cannot be effected, the county commissioners are hereby authorized to **sell** said refunding **bonds** from time to time, at not less than their face value, in such sums as may be necessary to create a fund for the redemption of the outstanding bonds aforesaid, and the money realized from the sale of said refunding bonds shall not be expended or used for any other purpose than for refunding said outstanding bonds.

4194. It shall be the duty of the **auditor** of state to **register** such substituted bonds, and of the secretary and auditor of state to certify the same, and a tax to pay the interest and principal thereof shall be levied in the same manner as is now provided by law or the constitution in the case of other county bonds.

4195. That the county **clerk** of each county shall **certify,** under the seal of the county, to the auditor, the number, amount, and description of each **bond canceled** or to be canceled, and refunded, and the amount due thereon for principal and unpaid interest, and thereupon the auditor is authorized to register a similar amount of refunding bonds; but in no case shall the auditor register any refunding bonds in excess of the amount so certified to him by the county clerk as aforesaid; and that said bonds shall be entitled to registration as aforesaid in the order that they are presented to the auditor.

4196. That the **registration** provided for in this act shall **apply to** all refunding bonds already issued, or to be issued in conformity with the provisions of this act.

4197. That counties are hereby authorized to **refund** their bonded **indebtedness** as provided for in this act, at dollar for dollar of said indebtedness, irrespective of the fact that said indebtedness exceeds ten per cent of the present valuation of the property of said county, and the same shall be registered as provided for in this act; and the refunding bonds, hereby authorized, may be issued by the commissioners of the county without submitting the proposition therefor to a vote of the electors.

Secs. 4198 to 4205. "An act to authorize county boards to issue the bonds of their respective counties for the purpose of purchasing grain for seed and feed for teams used in cultivating the land upon which the seed is planted, and to provide for the sale of the same; and to punish the violation of the provisons of this act." 1891, p. 310. · In force March 24.

4198. That the board of any county of this state shall have the authority to issue the bonds of their respective counties to an amount not to exceed three (3) per cent of the assessed valuation of the county for the year 1890, and not exceeding the sum of twenty thousand dollars ($20,000), for the purpose of raising money to purchase grain to be planted and sown for the purpose of raising crops for the year 1891, and for feeding teams used in raising said crops; *Provided*, A special election shall be called, at which the question of bonding the county shall be submitted to the people, as provided for in section twenty-seven (27) of chapter eighteen (18) of the Compiled Statutes of Nebraska, revision of 1887 [871].

4199. Upon a vote of a majority of the legal voters voting at said election, as provided for in section one of this act, the county board shall issue the bonds of the county payable in ten years, with the option of the county to pay the whole or any part thereof, after the expiration of five (5) years from the date thereof, with interest at a rate not to exceed seven (7) per cent per annum.

4200. The county board shall sell said bonds for the highest obtainable price, not less than their face value, and shall invest the proceeds thereof, or so much as may be necessary, in the purchase of grain suitable for seed for planting and sowing, and for the necessary feed for teams used in raising said crops, and shall sell the same to such persons only as are engaged in agriculture, at a price not exceeding the actual cost thereof to the county, with 10 per cent added to defray the expenses of sale, and shall take the promissory notes of the purchaser, payable to the county, and due in five (5) years thereafter with interest from date at the rate of seven (7) per cent per annum, payable annually, and which notes shall be held and collected by the county when due, and when collected the money shall be paid into the county treasury.

4201. No farmer shall be permitted to purchase any of said grain until he shall first have made an affidavit that he is actually engaged in farming; that he has no grain for seed or feed for his team, or if he have any, stating the quantity thereof, and that he desires to use said grain for no other purpose than is provided by this act, and shall also furnish the affidavits of two credible residents of said county and of his neighborhood to the effect that he is a reputable citizen of said county, and that they verily believe the statements contained in his affidavit are true. And upon such affidavits being made and filed, to be preserved in the office of the county clerk, and the execution of the note to the county as herein provided for, the said county board may deliver to him grain for seeding purposes not to exceed fifty bushels, and grain for feeding purposes not to exceed fifty bushels to any one person.

4202. That any person, who, after having obtained grain for feed and seed as herein provided, shall sell, transfer, or in any other manner dispose of the said seed or grain, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars ($100) or be imprisoned in the county jail not exceeding three months, and, moreover, shall be liable to the county from which the same was obtained for the value of the seed or feed so obtained.

4203. It shall be lawful for the county board to designate any one of their number to sell the said bonds, purchase the grain, and sell the same as herein provided, and the person or **persons** who may **sell** said **bonds** and **purchase** and sell said **grain** shall make a full exhibit and **settlement** with the county board on or before the first day of July, 1891, or if said board shall not be in session on said date, said settlement shall be made at the first meeting of the board after said date.

4204. If any **person** entrusted with the sale of said bonds and the purchase and sale of said grain shall **fail to account** for and settle in full for the money and grain placed or coming into his hand, or shall convert any part thereof to his own use, he shall be deemed guilty of **embezzlement** and upon conviction thereof shall be punished accordingly.

4205. The county board of any county issuing bonds under the provisions of this act shall levy a tax for the **payment of** the **interest** on said bonds as it becomes due; *Provided*, That an additional amount shall be levied **and** collected sufficient to pay the **principal** of such bonds at maturity; *Provided further*, That not more than twenty per cent of the principal of said bonds shall be levied and collected in any one year.

Secs. 4206 and 4207. "An act to authorize and empower cities of the second class to vote upon propositions to issue bonds and to devote the proceeds thereof in aid of the construction of a county court house." 1889, p. 81. In force February 15.

4206. The mayor and council of cities of the second class shall have and hereby are given the power and authority to borrow money and pledge the property and credit of such city upon its negotiable **bonds** in an amount not to exceed five (5) per centum of the assessed valuation of the taxable property within the limits of such city for the purpose of aiding in the building, erecting, constructing, or repairing and furnishing a county court house, in addition to bonds already voted for by the county, authority for the issuance of such bonds having first been obtained by a three-fifths ($\frac{3}{5}$) vote of the qualified electors of such city voting on a proposition for such purpose by any general or special **election**; such proposition to be submitted to such electors in the manner now provided by the laws of this state for the submission of propositions to aid in the construction of railroads and other works of internal improvements, such bonds to bear interest not to exceed six per centum per annum, and to be sold for not less than par and run not to exceed twenty years.

4207. The **election** at which any such proposition shall be voted upon shall in all respects be **conducted** and the returns shall be canvassed and declared in the manner now provided by law for such purposes at general elections held in such cities.

Secs. 4208 to 4210. "An act authorizing cities to fund their indebtedness." 1881, p. 161. In force February 28.

4208. That any city of the second class in the state of Nebraska may issue **bonds** for the purpose of funding any and all indebtedness now existing or hereafter created, now due or to become due; *Provided*, That the said bonds shall be **payable** in not less than ten years and not more than twenty years from date of their issue, and that said bonds shall bear **interest** at a rate not exceeding seven per cent per annum, with interest coupons attached, payable annually or semi-annually, and may levy tax on all the taxable property in the city in addition to other taxes for the payment of said coupons as they respectively become due, and the taxes levied to pay the same shall be payable only in cash or said coupons; *Provided*, That the city council of said cities shall **further** authorize the **issuing** of said bonds by ordinance when so instructed by a two-thirds majority of all the votes cast at an election held in such city for that purpose, except as hereinafter provided. Notice of said election to be published in four issues of some weekly paper published in the city seeking to issue bonds.

4209. That any city of the second class in the state of Nebraska which has heretofore voted and issued **bonds** to aid in the construction of any railroad or other work of internal improvement, or [and] which bonds or any part thereof still remain unpaid and are a legal liability against such city, and have been finally so determined by a court of competent jurisdiction, and bearing interest at ten per cent per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding seven per cent per annum, to be **substituted** in the place of and exchanged for such bonds heretofore issued, whenever such city can effect such substitution and exchange, which substitution and exchange shall not exceed dollar for dollar; *Provided,* That such substitution and exchange shall have first been duly authorized by a majority vote of the people of said city at an election to be held for the purpose as provided in section 1 of this act.

4210. The bonds issued under the **provisions** of section 2 [4209] of this act shall have recited therein the object of their issue, and the section of the act under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number, date, and amount of the bond or bonds for which it was substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated.

Secs. 4211 to 4213. "An act to provide for the registration by the auditor of public accounts of **bonds** issued by **villages** and **cities** of the second class." 1885, p. 92. In force March 5.

4211. That all **bonds** hereafter issued by the corporate authorities of any village or city of the second class shall, before such bonds or any of them are sold or negotiated, be presented to the auditor of public accounts, and he shall examine such bonds and all proceedings relative to their issue, and if he be satisfied that such bonds have been legally issued for a lawful purpose, **register** the same in his office in a book kept by him for such purpose, and shall under his seal of office certify upon such bonds the fact that they have been regularly and legally issued, and that such bonds have been registered in his office in accordance with the provisions of this act, the data filed in his office being the basis of such certificate.

Auditor can only be compelled to register bonds regularly issued. **25**, 503 (41 N. W., 450).

4212. Whenever the holder of any bond heretofore issued by any village or city of the second class shall present the same to the **auditor** of public accounts for registration, he shall **examine** such bonds and the proceedings under which the same were issued, and if he be satisfied that such bonds were legally issued for a lawful purpose, register the same in his office in a book kept for that purpose, and shall under his seal of office **certify** upon such bonds the fact that they have been regularly and legally issued, and that such bonds have been registered in his office in accordance with the provisions of this act, and the data filed in his office being the basis of such certificate.

4213. It shall be the duty of the **clerk** of any village or city of the second class in which any bonds may hereafter be issued to transmit with such bonds to the auditor of public accounts a duly certified **transcript of** all the **proceedings** had previous to the issuance of such bonds relative thereto, for the information of said auditor, and it is hereby likewise made the duty of the clerks of villages and cities of the second class to furnish such transcript to the holder of any bond of any such village or city of the second class on demand of such holder.

Secs. 4214 to 4217. "An act to authorize precincts, townships, and villages to vote bonds to aid works of internal improvement, highways, railroads, bridges, court houses, jails, and the drainage of swamp lands," etc. 1885, p. 268. In force March 6. Repealing sec. 7, Laws 1869, p. 93.

4214. Any precinct, township, or village (less than a city of the second class), organized according to law, is hereby authorized to issue **bonds** in aid of works of **internal improvement,** highways, bridges, railroads, court house, jails in any part of the county, and the drainage of swamp and wet lands, to an extent not exceeding ten per cent of the assessed value of the taxable property at the last assessment within such township, precinct, or village, in the manner hereinafter directed, viz.: *First*—A **petition** signed by not less than fifty freeholders of the precinct, township, or village shall be presented to the county commissioners, or board authorized by law to attend to the business of the county within which such precinct, township, or village is situated. Said petition shall set forth the nature of the work contemplated, the amount of the bonds sought to be voted, the rate of interest, which shall in no event exceed eight per cent per annum, and the date when the principal and interest shall become due; and the said petitioners shall give bond, to be approved by the county commissioners, for the payment of the expenses of the **election,** in the event that the proposition shall fail to receive a two-thirds majority of the votes cast at the election. *Second*—Upon the reception of such petition the county commissioners shall give notice, and call an election in the precinct, township, or village, as the case may be. Said notice, call, and election shall be governed by the law regulating the election for voting bonds by a county.

County board are agents of county and not of townships, and county is liable for expense of notice. **26,** 132 (41 N. W., 1071). An election held by petition of less than fifty freeholders void. **21,** 194 (31 N. W., 682). Company held to have complied with the conditions of proposition and entitled to the bonds. **14,** 324 (15 N. W., 727). See **6,** 49.

4215. If two-thirds of the votes cast at such election shall be in favor of the proposition, the county commissioners or board shall, without delay, cause to be prepared and **issue** the **bonds** in accordance with the petition and notice of election; said bonds shall be signed by the chairman of the board or person authorized to sign county bonds, and attested by the clerk of the county, under the seal of the county. Said bonds shall state for what purpose issued; the amount, and when payable, interest, and when payable, and the number of each bond. The county clerk shall enter upon the records of the board the petition, bond, notice, and call for the election, canvass of vote, the number, amount, and interest, and date at which each bond issued shall become payable; and the county clerk shall cause such bonds to be registered in the office of secretary of state and state auditor, as required by law.

4216. The county commissioners, or persons charged with levying the **taxes** for the county, shall each year, until the bonds voted under the authority of this act be paid, levy upon the taxable property in the precinct, township, or village a tax sufficient to pay the interest and five per cent of the principal of bonds issued under this act; and at the tax levy preceding the maturity of any such bonds, levy an amount sufficient to pay the principal and interest due on said bonds.

This section provides the only method of collecting precinct bonds. Mandamus to compel the county officers to levy and collect taxes sufficient to pay the interest and principal of said bonds when same become due is the appropriate and only remedy. **10,** 24 (4 N. W., 370).

4217. All **proceedings** in relation to such election and the issuance of the bonds shall be in accordance with the provisions of this act.

Secs. 4218 and 4219. "An act to provide for the certification, registration, and payment of **precinct bonds.**" 1885, p. 94. In force March 4.

4218. [**Registration.**]—Whenever the holder of precinct bonds, issued under any law of this state for the purpose of the erection of bridges wholly within the limits of a county, shall present the same to the auditor and secretary of state, together with duplicate statements of the question of submission, notice and proof of publication, return of votes for and against, duly certified by the county clerk, it shall be the duty of said officers to examine said bonds and statements, and if they be satisfied that such bonds are in all respects in due form and been properly issued, to enter that fact upon the records of their respective offices, together with said statements, and thereupon the secretary and auditor shall place their joint certificate upon said bonds, and the auditor shall register the same in his office, such certificate showing that such bonds were issued pursuant to law, the data filed with such officers being the basis of such certificate.

See 7, 259.

4219. Upon the registration of such bonds it shall be the duty of the auditor to certify that fact to the proper county board, and thereupon said board shall, at the usual time of levying taxes in each year, levy a **tax** upon all the property of the proper precinct, sufficient **to pay** the annual interest on said bonds, and the principal thereof, in accordance with the terms of the proposition under which said bonds were issued. Taxes so levied shall be collected by the county treasurer as other taxes are collected, and the amounts due on said bonds paid to the holder thereof.

Secs. 4220 to 4223. "An act to authorize the sale of **refunding** bonds of precinct, and to provide for registering and certifying the same and all other **precinct bonds** that are or have been legally issued and are not now in litigation. 1885, p. 95. In force March 5.

4220. That when the county commissioners of any county issue coupon bonds to refund the bonded indebtedness of any precinct in the state of Nebraska, and in case an exchange of said **refunding bonds** cannot be effected, the county commissioners are hereby authorized to sell said refunding bonds from time to time, at not less than their face value, in such sums as may be necessary to create a fund for the redemption of the outstanding bonds aforesaid, and the money realized from the **sale** of said refunding bonds shall not be expended or used for any other purpose than for refunding said outstanding bonds.

4221. It shall be the duty of the **auditor** of state **to register** such substituted bonds, and of the secretary and auditor of state to certify the same, and a tax to pay the interest and principal thereof shall be levied in the same manner as is now provided by law or the constitution in the case of other precinct bonds.

4222. That the county **clerk** of each county shall **certify** under the seal of the county to the auditor, the number, amount, and description of each bond canceled or to be canceled and refunded, and the amount due thereon for principal and unpaid interest, and thereupon the auditor is authorized to register a similar amount of refunding bonds. But in no case shall the auditor register any refunding bonds in excess of the amount so certified to him by the county clerk as aforesaid; and that said bonds shall be entitled to registration as aforesaid, in the order that they are presented to the auditor.

4223. That the **registration** provided for in this act shall **apply to all** refunding bonds already issued, or to be issued in conformity with the provisions of this act, and all other precinct bonds that are or have been legally issued, and are not now in litigation.

Secs. 4224 to 4227. "An act to provide for the registration of **precinct** or township and **school** district **bonds.**" 1873; G. S., p. 883. In force February 27.

4224. From and after the passage of this law, it shall be the duty of precinct or township and school district boards or **officers,** after having first filed for record with the county clerk the question of submission, notice and proof of publication, return of votes for and against, **to register** with the county clerk all precinct or township and school district **bonds** voted and issued pursuant to the following act and sections of an act: "An act to enable counties, cities, and precincts to borrow money on their bonds, or to issue bonds in aid of works of internal improvement in this state, and to legalize bonds already issued for such purposes," approved February 15, 1869; and amendments thereto approved March 3, 1870. And sections 30, 31, and 32, of "An act to establish a system of public instruction for the state of Nebraska," approved February 15, 1869.

See 7, 497.

4225. It shall be the duty of the county clerk, in a book prepared for that purpose, to **record** the question of submission, notice and proof of publication, return of votes for and against; and the **fee** for so doing, to be paid by the precinct or township, or school district board or officers, as the case may be, shall be the same as charged for the recording of deeds and mortgages.

4226. It shall be the duty of the county clerk, on presentation of any precinct or township or school district bonds for **registry,** to register the same in a book prepared for that purpose, which register shall contain: *First*—The number or name of the precint or township, or school district. *Second*—The number of the bond. *Third*—The date of the bond. *Fourth*—To whom payable. *Fifth*—Where payable. *Sixth*—When due. *Seventh*—When interest is due. *Eighth*—Amount of bond. *Ninth*—Reference by page to the book provided for in section two, giving history of the bond. The county clerk shall receive a **fee** of twenty-five cents for every bond so registered.

See **21**; 732 (33 N. W., 266).

4227. It shall be the **duty of** all precinct or township and school district boards or **officers,** immediately after the passage of this act, to furnish the county clerks of their respective counties with a statement of the amount of bonds heretofore issued by their precincts, townships, or school districts, and not already paid, the date of each bond, when, where, and to whom payable, the amount, the rate of interest, and when and where it is payable; which bonds shall be registered by the county clerk, in conformity with section three of this act; and the fee for registering under this section shall be twenty-five cents for each bond.

This section held constitutional. 19, 324 (27 N. W., 139).

Secs. 4228 to 4246. "An act to provide for the issuing and payment of school district bonds." 1879, p. 170. In force June 1.

4228. The district officers of any school district in Nebraska shall have power to issue the **bonds** of the district **for** the purpose of purchasing a **site** for and erecting thereon a school house or school houses, and furnishing the same in such district, on the terms and conditions set forth in the succeeding sections of this act.

Bonds cannot be given to party to build a house but must be sold. 16, 188 (20 N. W., 209). Does not authorize levying more than 25 mills annual school taxes. 12, 259 (11 N. W., 307). School bonds held void under law on February 15, 1869. 10, 544 (7 N. W., 315). Bonds issued under section 30, General Statutes, 966, were valid. 13, 81 (12 N. W., 927).

4229. No **bonds** shall be issued until the question has been submitted to the qualified electors of the district, and two-thirds of all the qualified electors present, and **voting** on the question, shall have declared by their votes in favor of issuing the same, at an election called for the purpose, upon a notice given by the officers of the district, at least twenty days prior to such election.

4230. **No vote** shall be ordered upon the issuance of such bonds, **unless a petition** shall be presented to the district board, suggesting that a vote be taken for or against the issuing of such amount of bonds as may therein be asked for, to purchase a site for or build a school house or houses, or for furnishing the necessary furniture and apparatus for the same, or for all of these purposes, which petition shall be signed by at least one-third of the qualified voters of such district; **Provided,* That the board of education in any city of the metropolitan class may order a vote upon the issuance of such bonds, without a petition therefor.

All after * added 1887, p. 596.

4231. That **no** such **bonds** shall be issued in the aggregate amount **to exceed** five per cent (excepting in districts having over two hundred (200) school children) of the last complete assessment of the taxable property of the district for state and county purposes; nor shall any district issue bonds unless there are at least twelve (12) children of school age residing within such district.

Amended 1887, p. 597.

4232. The **amount** of bonds shall in **no case exceed** five hundred (500) dollars in those districts having less than twenty-five (25) scholars, and not less than twelve (12) of school age, and the amount of bonds shall not exceed one thousand (1,000) dollars when the number of children of school age are twenty-five or more, and less than fifty (50); and the amount of bonds shall not exceed two thousand (2,000) dollars, when the number of children of school age in the district are fifty (50) or more, but less than one hundred (100); and the amount of bonds shall not exceed five thousand (5,000) dollars when the number of children of school age in the district are one hundred (100) or more, but less than two hundred (200); and in districts having two hundred (200) or more school children, such amount as may be agreed upon, not to exceed ten (10) per cent of the assessed valuation of the last completed assessment.

Amended 1887, p. 597.

4233. The bonds issued under this subdivision shall draw such **interest** as shall be agreed upon, but not to exceed seven per cent per annum.

4234. The **bonds shall specify** on their face the date, amount, for what purpose issued, the time they run, and the rate of interest; shall be printed on good paper, with coupons attached for each year or half year's interest, and the amount of each year's interest shall be placed in corresponding coupons until such bonds shall become due, in a manner so as to have the last coupon fall due at the same time as the bonds; said bonds and coupons thereto attached shall be severally signed by the director, moderator, and treasurer of the district board.

4235. It shall be the duty of the proper **officers** of any school district in which any bonds may be voted under the authority of any law of this state, before the issuance of such bonds, to make a written **statement of all** proceedings relative to the vote upon the issuance of such bonds and the notice of the election, manner and time of giving notice, questions of submission, results of a canvass of the vote on the proposition on account of which it is proposed to issue such bonds, together with a full statement of the assessed valuation, the number of children of school age residing in the district, and total bonded indebtedness of the school district voting such bonds. Such statement shall be certified to under oath by the proper school board of the district, and be transmitted with the bonds proposed to be issued to the auditor of public accounts.

4236. The **auditor** shall **examine** the statements and bonds so submitted to him, and if he be satisfied that such bonds have been voted in conformity to law, and are in all respects in due form, he shall record the statement and register the bonds in his office, and no such bonds shall be issued or be valid unless they shall be so registered and have endorsed thereon a certificate of said auditor and the secretary of state, showing that such bonds are issued pursuant to law, the data filed in the office of said auditor being the basis of such certificate.

4237. Upon the **registration** of such bonds aforesaid, the auditor of public accounts shall **certify** the fact to the county clerk of the county in which the district is situated, and also to the proper officers of such school district, and whose duty it shall be to enter the same upon the proper records of such school district, and taxes for the payment of such bonds and the interest thereof shall be levied in the manner provided by section 13 of this act [4240].

4238. If the **auditor** of public accounts is **not satisfied** that such bonds have [been] issued according to law, he shall return the same to the proper officers with a certificate to that effect.

4239. **Bonds heretofore issued** under any of the provisions of any law of this state may be registered in the office of the auditor of public accounts upon compliance with the provisions of this chapter, but nothing herein contained shall affect the validity of bonds heretofore issued and not registered under any law of this state.

4240. It shall be the duty of the board of county commissioners in each county to **levy,** annually, upon all the taxable property in each school district in such county, a tax sufficient to pay the interest accruing upon any bond issued by such school district, and to provide a **sinking fund** for the final redemption of the same, such levy to be made with the annual levy of the county, and the taxes collected with other taxes, and when collected shall be and remain in the hands of the county treasurer a specific fund for the payment of the interest upon such bonds, and for the final payment of the same at maturity. It shall be the duty of the county clerk to furnish a copy of his register to the county treasurer.

4241. That the phrase and expression "**school district,**" as used in the preceding section, is hereby declared to mean, intend, and refer to the school district as it existed immediately prior to and at the time of the issuance of any bonds by said school district, including all lands and property and inhabitants comprised and contained in said school district at the time of the issuance of any bonds, including all and any portions of said district subsequently separated from said district, whether by formation of a new district or by any change of boundaries of said original district.

But new district becomes liable for debts of old. This section construed. 15, 4 (16 N. W., 902.)

4242. Any **money remaining** in the hands of any treasurer, after the payment of interest due on any bonds which are a valid and legal obligation against the school district to which such money belongs, and the retention of a sufficient amount to pay the accruing interest npon such bonds for the current year, shall be retained as a sinking fund for the final redemption of such bonds and shall be by the treasurer, when so ordered by the school board, **invested** as follows, to-wit: *First*—In redeeming bonds of the school district issuing the same. *Second*—In registered bonds of the county in which the district is situated. *Third*—In the bonds of the state of Nebraska. *Fourth*—In the bonds of the United States; *Provided*, That the bonds thus purchased shall in all cases be purchased at the lowest market price, after twenty days' notice by publication in at least one newspaper published and in general circulation at the capital city or town of the state; the cost of which advertising, at legal rates, shall be paid out of the sinking fund for the redemption of such bonds.

4243. When the interest and principal, or interest only, of such registered bonds are payable in New York city, or elsewhere out of the state, **payment** shall be therein **made** at the place so designated in such bond or coupon, or at the commercial agency of the state for such purposes, and in order that the funds may not be misapplied, the treasurer shall procure a draft for the amount, to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or, at the request of the party holding or owning said bonds, payment may be made at the office of said treasurer.

4244. The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the **treasurer** shall be **liable** on his official bond for the faithful disbursements of all moneys so collected or received by him. *After the principal and interest of such bonds shall have been fully paid, and all obligations for which such fund and taxes were raised have been discharged, the county clerk, upon the order of the county commissioners, shall notify the county treasurer to transfer all such funds remaining in his hands to the credit of the district to which they belong.

All after * added 1885, p. 331.

4245. When any registered **bonds** shall **mature,** the same shall be **paid** off by the treasurer, at the place where the same shall be payable, out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the treasurer on the face thereof, "**Canceled,**" together with the date of such payment; and thereupon be filed with the clerk, who shall enter satisfaction of such bonds upon the records of such school district. In case such bonds are payable out of the state, an allowance of one-fourth of one per cent shall be made to the treasurer for the expense attendant in making such payment, to be deducted from any money in his hands remaining after payment of such matured bonds.

4246. That the **act** entitled "An act to amend an act entitled 'An act to establish a system of public instruction for the state of Nebraska,'" approved February 25, 1875; and, also those portions of the act entitled "An act to provide for the registration of precinct, or township, and school district bonds," in conflict with this act, and all other acts or parts of acts inconsistent with this act, be and the same is hereby **repealed;** *Provided*, That nothing in this act shall affect in any manner the validity of bonds heretofore issued.

Secs. 4247 to 4249. "An act to provide for the **funding** of outstanding **school district bonds.**" 1879, p. 176. In force June 1.

4247. That any school district in the state of Nebraska which has heretofore voted and issued **bonds** to build or furnish a school house, or for any other purpose, and which bonds, or any part thereof, still remain unpaid, and remain and on [are] a legal liability against such district, and bearing interest at ten per centum per annum, is hereby authorized to issue coupon bonds at a rate of interest not exceeding seven per centum per annum, to be substituted in place of and **exchanged for** such **bonds** heretofore issued, whenever such school district can effect such substitution and exchange, at a rate not to exceed dollar for dollar.

4248. The **new bond** so issued shall have recited therein the object of its issue, the title of the act under which the issue was made, stating the issue to be in pursuance thereof, and shall also state the number, date, and amount of the bond or bonds for which it is substituted, and such new bond shall not be **delivered** until the surrender of the bond or bonds so designated.

4249. The **new bonds** as issued shall **not require** a **vote** of the people to authorize such issue, and they shall be paid, and the levy be made and **tax** collected for their payment in accordance with laws now governing the said bonds heretofore issued.

Secs. 4250 to 4253. "An act to authorize any **school district** in any city of the first class to issue **bonds** in certain cases." 1879, p. 167. In force February 26.

4250. That any school district in any city of the first class in this state be and is hereby authorized and empowered to issue its coupon **bonds** of such denominations as the board of education of such school district may deem best, and in an amount equal to the amount outstanding and unpaid of bonds bearing interest at the rate of ten per cent per annum, heretofore issued for the purpose of erecting a

high school building, by such school district, or by any school organization or board of regents which shall have been superseded by such school district.

4251. Any **bonds** issued under the provisions of this act **shall be for** the payment, by the school district issuing the same, of the sum specified therein, made payable in the city of New York, in not more than twenty years nor less than five years from the time they are issued, with interest at a rate not exceeding seven per cent per annum, payable semi-annually; said bonds and coupons shall be required [signed] by the president of the board of education and countersigned by its secretary; *Provided*, That such bonds may be made redeemable at any time after five years, at the option of the board of education.

4252. It shall be the duty of the **board** of education of any school district issuing bonds under the provisions of this act, to **negotiate** such **bonds**, but for not less than the par value thereof, and all the proceeds arising from the sale thereof shall be paid to the treasurer of the board of education, and shall be applied solely to the redemption and purchase of the bonds heretofore issued by such school district, or school organization superseded by it, for the purpose of erecting a high school building, and bearing interest at the rate of ten per cent per annum; *Provided*, That none of the said bonds heretofore issued shall be redeemed or purchased for more than the face value thereof.

4253. The **bonds** issued under the provisions of this act shall **not require** a **vote** of the people to authorize their issue, and they shall be paid, and taxes shall be levied and collected for their payment in the same manner as is now provided by law for the payment of bonds heretofore issued by such school districts.

III. WARRANTS.

Secs. 4254 to 4265. "An act to **provide** the **duties of** the state treasurer, of the **treasurers** of counties, and of other municipal corporations in certain cases, and to enforce their performance. 1871, p. 113. In force March 11.

4254. All **warrants** upon the state treasurer, the treasurer of any county, or any municipal corporation therein, shall be **paid in** the **order** of their presentation therefor.

See **29**, 519 (45 N. W., 780).

4255. The treasurer of this state, and the treasurer of every county, and every incorporated city or town therein, shall keep a **warrant register**, which register shall show, in columns arranged for that purpose, the number, date, and amount of each warrant presented and registered as hereinafter provided, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, the date of payment, the amount of interest, and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed, as hereinafter provided.

Section 1 quoted, and sections 2 and 3 cited. **10**, 31 (4 N. W., 377).

4256. It shall be the **duty of** every such **treasurer**, upon the presentation of any warrant for payment, in presence of such person, to enter such warrant in his warrant **register** for payment in the order of its presentation, and upon every **warrant** so presented and registered he shall endorse "registered for payment," with the date of such registration, and shall sign such endorsement; *Provided*, That all warrants outstanding at the time this act takes effect shall be presented for payment or registration by August first (1st), 1891, and shall not draw interest after such date unless so presented.

Amended 1891, p. 394.

4257. It shall be the duty of every such treasurer to **put aside** in a separate and sealed package, the **money for** the payment of **each** registered **warrant**, in the order of its registration, as soon as money sufficient for the payment of such warrant is received to the credit of the particular fund upon which the same is drawn, such package shall be endorsed with the number and description of such warrant, and the name and address of the person in whose name the same is registered, and interest upon such warrant shall thereupon cease, and such treasurer shall by mail immediately notify the person in whose name the same is registered, and shall endorse the date of the mailing of such notice upon such sealed package.

Under this section warrants must be paid in the order of their entry on the record. 10, 32 (4 N. W., 377).

4258. The **state treasurer** shall make triplicate **receipts,** under the seal of his office, for all sums which shall be paid into the treasury, showing the amount paid in to the credit of each separate fund, in cash and in warrants separately, two of which receipts he shall deliver to the person making such payment, and the person making such payment shall deliver one of such receipts to the auditor, who shall credit such person accordingly, and the treasurer shall retain one of said triplicates in his office.

4259. Every **county treasurer** shall make out triplicate **receipts** for all sums which shall be paid into his office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash or warrants, county or road orders, or supervisors' receipts; one of which triplicates the treasurer shall deliver to the person making such payment, and [one] he shall within six days file with the county clerk, the third he shall retain in his office.

4260. The **treasurer of** every **city** or incorporated town shall make duplicate **receipts** for all sums which shall be paid into his office, which receipts shall show the source from which such funds are derived, and shall by distinct lines and columns show the amount received to the credit of each separate fund, and whether the same was paid, in cash, in warrants, or otherwise; one of which duplicates the treasurer shall deliver to the person making such payment, and the duplicate thereof he shall retain in his office.

4261. Every such treasurer shall, daily, as moneys are received, foot the several columns of his **cash book,** and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants registered, he shall close the account for that year in such register, and shall carry forward the excess.

4262. Any such **treasurer** who shall **fail** regularly **to enter** upon his **cash** book the amounts so received and receipted for, or who shall fail to keep his cash book footed from day to day, as required by this act, for the space of three days, shall **forfeit** for each offense the sum of one hundred dollars, to be recovered in a civil action on his official bond by any person holding a warrant drawn on such treasurer, one-half to the person bringing such action, and one-half to the school fund of the county in which such action is brought.

4263. The **cash book,** register, and retained receipts of every such treasurer shall at all times be **open to** the **inspection** of any person in whose name any warrants are registered and unpaid.

4264. Any **treasurer** who shall, for the period of five days after moneys in amount sufficient to pay any registered warrant in its order have been received, **fail to mail notice** thereof to the person registering such warrant, shall **forfeit** to such person ten per cent on the amount of such warrant, and ten per cent additional for every thirty days thereafter during which such failure shall continue.

4265. Any such **treasurer** who shall fail to **register** any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be **liable** on his official bond to each and every person, the payment of whose warrant or warrants is thereby postponed, in the sum of five hundred dollars, to be recovered in a civil action, one-half of which shall go to the person bringing such action, and one-half to the school fund of the county in which such action is brought.

Treasurer not liable for penalty for failure to register before ten days from date of issue. 23, 432 (36 N. W., 809).

Sec. 4266. "An act to provide for the **issuance of duplicate warrants.**" 1875, p. 176. In force February 17.

4266. Whenever it shall be made to appear to the satisfaction of any officer, authorized by law to issue warrants, that any **warrant** issued to him has been **lost and destroyed,** such officer shall have authority to issue a duplicate thereof, numbered the same as the original, with the word "**duplicate**" written or printed in red **ink** across the face thereof; *Provided,* That no such duplicate warrant shall be issued until the party applying for the same shall make affidavit that he was the owner of the original warrant, and shall also file with such officer an indemnity bond with good and sufficient security conditioned to refund any money by him or his assigns received on such duplicate in case of presentation and payment of the original by the treasurer upon whom the same is drawn, whether upon a genuine endorsement thereon or otherwise.

Secs. 4267 to 4269. "An act to provide for the **payment of** outstanding **road** fund **warrants.**" 1879, p. 164. In force June 1.

4267. That in order to provide for the payment of **outstanding road** fund **warrants** issued by any organized county in this state prior to the repeal of the act authorizing their issue, the county commissioners of any county where such indebtedness exists be and the same are hereby authorized and empowered to levy a **special tax** not exceeding five mills upon the dollar of the valuation of said county, or so much thereof as may be necessary to pay all the outstanding indebtedness of the character hereinbefore mentioned. Said levy to be made by the county commissioners at their next regular annual meeting in July, 1879, while assembled for the purpose of levying other taxes as provided by law. Said tax to be collected by the county treasurer in the same manner as other county taxes are collected, and the said warrants to be paid by the county treasurer in the order in which they appear upon his warrant register.

4268. In case the five-mill **levy** hereinbefore mentioned in section one of this act shall not be sufficient to pay the entire amount of outstanding road fund warrants, the county commissioners in such counties where a deficiency exists shall annually thereafter make other levies for this purpose, not exceeding five mills on the dollar in any one year, until all the outstanding road fund warrants before mentioned shall have been paid.

4269. All **moneys** derived from the collection of taxes under this levy **remaining** in the hands of the county treasurer after all the road fund warrants shall have been paid, shall be transferred to the general fund of said county.

IV. MISCELLANEOUS PROVISIONS.

Secs. 4270 to 4280. "An act to provide for the **depositing of state and county funds** in banks." 1891, p. 347. In force August 1. 'See preface.

4270. The **state treasurer** shall **deposit,** and at all times keep in deposit for safe keeping, in state or national banks, or some of them doing business in the state, and of approved standing and responsibility, the amounts of money in his hands belonging to the several current funds in the state treasury, and any such bank may apply for the privilege of keeping on deposit such funds or some part thereof; all such deposits shall be subject to payment when demanded by the state treasurer on his check, and by all banks receiving and holding such deposits as aforesaid, shall be required to pay, and shall pay to the state for the privilege of holding any such deposit not less than 3 per cent per annum upon the amounts so deposited as hereinafter provided, and subject also to such regulations as are imposed by law and the rule adopted by the state treasurer for receiving and holding such deposits.

4271. The **amount** to be **paid by** any and all **banks** under the provisions of this act for the privilege of keeping public funds on deposit shall be computed on the average daily balances of the public moneys kept on deposit therewith, and shall be paid and credited to the state quarterly on the first days of January, April, July, and October of each and every year, and the treasurer shall require every such depository to keep separate **accounts** of such several funds of the state as may be deposited, showing the name of each fund to which the same belongs and the amounts and sums paid to the state for the privilege of keeping the same on deposit as aforesaid, and to each of said funds respectively shall be credited directly to the account of the fund or funds so held on deposit, in proportion to the amount of such funds so held.

4272. For the **security** of the funds so deposited under the provision of this act the state treasurer shall require all such **depositories** to give **bonds** for safe keeping and payments of such deposits and the accretions thereof, which bond shall run to the people of the state of Nebraska, approved by the governor, secretary of the state, and attorney general, and conditioned on that depository shall, at the end of each and every month, render to the treasurer a **statement**, in duplicate, showing the several daily balances and the amount of money of the state held by it during the month, and the amount of the accretions thereof, and how credited, separately, and for the payment of the said deposit and the accretions accruing thereon, as hereinbefore provided, when demanded by the state treasurer on his check at any time, and generally to do and perform whatever may be required by the provisions of this act and a faithful discharge of trust reposed in such repository. The said bond shall be in substance as follows:

Know all men by these presents, that we, ——, as principals, and ——, as sureties, are held and firmly bound unto the people of the state of Nebraska in the just and full sum of —— dollars, for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated the —— day of —— A. D. ——.

Whereas, the said bank, in consideration of said deposit certain* of the moneys of the state of Nebraska for safe keeping with and in the —— bank of ——, the amount whereof shall be subject to withdrawal or diminution by said treasurer as the requirements of the state shall demand, and which amount may be increased or decreased as the said treasurer may determine; and whereas, the said bank, in consideration of said deposit, and for the privilege of keeping the same, has agreed to and will pay the people of the state of Nebraska the sum of three (3) per cent per annum on account of the said deposit, the same shall be paid quarterly upon the daily average of the sum of such amount as the said bank shall have on deposit to the credit of said state, or any of the funds thereof, for the quarter or any fraction thereof next preceding the payment of said per centum, which shall be computed and credited to the account of fund or funds so deposited and as a part of the said state funds, and the state treasurer to be at once notified of said credit and the amount thereof.

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* So in original.

Now therefore if the said —— bank of —— shall, at the end of every month, render to the state treasurer a statement in duplicate showing the daily balance of state funds held by it during the month next preceding, and the accretions thereof, and how the same had been credited, and shall well and truly keep all such sums of money so deposited or to be deposited as aforesaid, subject to the check and order of the state treasurer as aforesaid, and shall pay over the same and each and every part thereof upon the written demand of the state treasurer, and shall estimate, calculate, and pay said per centum as aforesaid, and to his successor in office as shall be by him demanded, and shall in all respects save and keep the people of the state of Nebraska and the said state treasurer harmless and indemnified for and by reason of the making of said deposit or deposits, then this obligation shall be void and of no effect, otherwise to be and remain in full force and virtue.

—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]

The treasurer shall not have on deposit in any bank, at any time, more than one half of the amount of the bond given by said bank. Said bonds shall be deposited with and held by the state auditor.

4273. The **making of profit,** directly or indirectly, **by** the **state treasurer,** out of any money in the state treasury, belonging to the state, the custody of which the state treasurer is charged with, by loaning, depositing, or otherwise using it, or depositing the same in any manner, or the removal by the state treasurer, or by his consent, of such moneys, or a part thereof, out of the vault of the treasurer's department, or any legal depository of the same, except for the payment of warrants legally drawn, or for the purpose of depositing the same in the banks selected as depositories under the provisions of this act, shall be deemed guilty of **felony,** and, on conviction thereof, shall be subject to punishment in the state penitentiary for the term of not more than two years or a fine not exceeding five thousand dollars ($5,000), and shall also be liable under and upon his official bonds for all profits realized from such unlawful using of such funds, and it is hereby made the duty of the state treasurer to use all reasonable and proper means to secure to the state the best terms for the depositing of the money belonging to the state, consistent with the safe keeping and prompt payment of the funds of the state when demanded.

4274. If the state **treasurer** shall willfully fail or refuse at any time **to** do or **perform** any act required of him by this act he shall be guilty of a **misdemeanor** and subject to indictment therefor, and, upon conviction thereof, he shall be sentenced to pay a fine of not exceeding five thousand dollars ($5,000); and it shall be the duty of the attorney general to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of this act.

4275. The **county treasurer** of each and every county in the state of Nebraska shall **deposit** and at all times keep in deposit for safe keeping, in state or national banks or in some of them doing business in the county, and of approved and responsible standing, the amounts of moneys in his hands belonging to the several current funds of the county treasury. Any such bank located in the county may apply for the privilege of keeping such funds upon the following conditions;

All such deposits shall be subject to payment when demanded by the county treasurer on his check and by all banks receiving and holding such deposits as aforesaid, and such **bank** shall be required to **pay** to the county, for the privilege of keeping such deposits, **interest** amounting to not less than three per cent per annum upon the amounts so deposited, as hereinafter provided, and subject also to such regulations as are imposed by law, and the rules adopted by the county treasurer for holding and receiving such deposits.

4276. The **amount** to be paid by any and all banks under the provisions of this act for the privilege of keeping public funds on deposit shall be **computed** on the average daily balance of the public moneys kept on deposit therewith, and shall be paid and credited to the county on the first day of January, April, July, and October of each and every year; and the treasurer shall require every such depository to keep separate accounts of such several funds of the county as may be deposited, showing the name of each, fund to which the same belong, and the amounts and sums paid to the county for the privilege of keeping the same on deposit as aforesaid; and to each of said funds respectively shall be credited directly to the account of the fund or funds so held on deposit, in proportion to the amount of such funds so held.

4277. For the **security** of the funds so deposited under the provisions of this act, the county treasurer shall require all such **depositories** to give **bonds** for safe keeping and payment of such deposits and the accretions thereof, which bond shall run to the people of the county and approved by the county board and conditioned on that depository shall,* at the end of each and every month, render to the treasurer a statement in duplicate, showing the several daily balances and the amounts of money of the county held by it during the month, and the amount of the accretions thereof, and how credited, separately, and for the payment of the said deposit and the accretions accruing thereon, as hereinbefore provided, when demanded by the county treasurer on his check at any time; and generally to do and perform whatever may be required by the provisions of this act, and a faithful discharge of trust reposed in such repository. The said bonds shall in substance be similar to that in section three [4272]. The treasurer shall not have on deposit in any bank at any time more than one-half of the amount of said bonds. Said bonds shall be deposited by* the county clerk.

4278. The **making of profit,** directly or indirectly, **by** the **county treasurer,** out of any money in the county treasury belonging to the county, the custody of which the treasurer is charged with, by loaning or depositing, or otherwise using or depositing * the same in any manner, or the removal by the county treasurer, or by his consent, of such money or a part thereof, out of the vault of the treasurer's department, or any legal repository of the same, except for the payment of warrants legally drawn, or for the purpose of depositing the same in the banks selected as depositories under the provisions of this act, shall be deemed guilty of **felony,** and, upon conviction thereof, shall be subject to punishment in the state penitentiary for the term of not more than two years, or a fine not exceeding five thousand dollars ($5,000), and shall also be liable under and upon his official bond for all profits realized from such unlawful using of such funds. And it is hereby made the duty of the county treasurer to use all reasonable and proper means to secure to the county the best terms for the depositing of the money belonging to the county, consistent with the safe-keeping and prompt payment of the funds of the county when demanded.

4279. If the **county treasurer** shall willfully fail or refuse at any time to do or perform any act required of him by this act, he shall be guilty of a **misde-**

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* So in original.

meanor and subject to indictment therefor, and upon conviction thereof he shall be sentenced to pay a fine of not exceeding five thousand dollars ($5,000); and it shall be the duty of the county attorney to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of this act; *Provided*, That this act shall not apply and be in force until the expiration of the present term of the state treasurer and the expiration of the present term of the several county treasurers of this state.

4280. *Provided further*, That no treasurer shall be liable on his bond for money on deposit in bank under and by direction of the proper legal authority, if said bank has given bonds.

Secs. 4281 to 4283. "An act to provide for the **safe keeping of moneys** belonging to the state." 1879, p. 152. In force June 1.

4281. Whenever there shall have **accumulated** in the hands of the state treasurer **moneys** of the state to an amount in excess of the sum of one hundred thousand dollars, the state treasurer shall in writing notify the governor and auditor of state of that fact, and thereupon within three days after the service of such notice, the governor, auditor, and treasurer shall meet and determine whether such excess is necessary to be retained in the treasury for the purpose of meeting the current demands thereon; and the record of said notification and the proceedings of said meeting, and of its finding, shall be made and signed by each of such officers, and preserved in the office of the auditor, who shall act as the secretary of such meeting.

4282. In case said officers shall find that said **excess** is not necessary to meet the current demands upon the treasury, the same shall be immediately **invested** in United States four per cent bonds, by the treasurer, who shall deposit the same in some safe deposit, to be designated by the governor, auditor, and treasurer, in writing, signed by them and made of record in the auditor's office, and there kept until it shall become necessary to convert the same into money, which necessity shall be determined and the record thereof kept in like manner as hereinbefore provided, and a statement of any such investment or sale under oath shall be published within ten days after the same is made, in some newspaper published at the capital, to be designated in writing by the governor. There shall also be published, in the same paper, a monthly statement under oath of the amount of cash balance in the state treasury, and of the amount invested as aforesaid.

4283. Any officer charged with the duties hereinbefore mentioned who shall make or publish any **false statement,** or swear falsely in respect to any matter or thing, in respect to which a sworn statement is herein required, shall be deemed guilty of **perjury,** and shall be prosecuted and punished accordingly.

Sec. 4284. "An act to provide for a state board for the settlement of **claims against defaulting** county **treasurers** and their bondsmen. 1877, p. 201. In force June 1.

4284. The auditor of public accounts, state treasurer, and attorney general, shall form a **board,** and as such, are hereby authorized and empowered to make all **settlements for moneys due** the **state** of Nebraska from any county treasurer or his bondsmen against whom judgment has been rendered in any court of this state, in such manner as in their judgment shall be to the best interests of the state.

Secs. 4285 and 4286. "An act to provide for the collection of public funds and money." 1879, p. 156. In force February 24.

4285. That in all cases in which **public moneys,** or other funds belonging to the state, or to any county, school district, city, or municipality thereof, have been deposited or **loaned** to any person or persons, corporations, bank, copartnership, or other firm or association of persons, it shall be lawful for the **officer or** officers making such deposit or loan, or his or their **successors** in office, to **maintain** an action or actions for the recovery of such moneys deposited or loaned, and all contracts for the security or payment of any such moneys or public funds made shall be held to be good and lawful contracts, binding on all parties thereto; *Provided*, Nothing herein contained shall be construed to in any manner affect the liability of any surety or signers of any official bond heretofore or hereafter given or made in this state.

Loaning or depositing public money unauthorized. 8, 67. Money deposited in bank in an unofficial capacity ceases to be public funds. 11, 434 (9 N. W., 566).

4286. All actions heretofore brought by any public officer, either in his own name or officially, for the recovery of any public moneys heretofore loaned or deposited, shall be sustained, and all remedies allowed in other cases, by attachment or otherwise, shall be admissible and allowed in such actions as in other cases.

Secs. 4287 to 4289. "An act to dispose of witness fees in certain cases." 1877, p. 225. In force June 1.

4287. That in all cases where witness fees shall be paid to the clerk of the district court, county judge, or justice of the peace, in pursuance of judgment of any of said courts, and shall remain in their or either of their hands uncalled for by the parties entitled thereto for the period of six months after the same have been paid in as aforesaid, it shall be the duty of the said clerk, county judge, and justice of the peace to prepare a list, under oath, of the causes in which said fees have been paid and remain uncalled for, with the amounts in each cause and the date of judgment, and present and file the same with the county commissioners of the respective counties on the first Tuesday in January, April, July, and October in each year; and it shall be the duty of said county commissioners, within twenty days after the filing of said report, to cause a notice to be published in some weekly newspaper of general circulation, published in the county, for at least two consecutive issues of said paper, a notice as follows: "To whom it may concern: Report having been made to the board [of] county commissioners of —— county, Nebraska, by the clerk of the district court, county judge, and the several justices of the peace of said county, which report shows that there is now and has been for the last six months remaining in the hands of the said district clerk, county judge, and justices of the peace certain witness fees which have been uncalled for: Now, if such fees shall not be called for within six months from (insert the day upon which the first report was made) the same will be considered as forfeited, and will be paid into the common school fund of said —— county."

4288. All fees remaining in the hands of such district clerks, county judge, or justice of the peace for the period of six months, after the same has been reported by them to the county commissioners, shall be paid over to the treasurer of the county, who shall receipt in duplicate for the same, one of which receipts shall be filed with the county clerk, and all such fees shall be credited to the common school fund of the county.

4289. It shall be the duty of the county commissioners to examine the books and dockets of the several officers herein named, and if they find that they have failed to report or pay over any of the money or fees intended to be paid over or reported by any of the provisions of this act, it shall be the duty of said county commissioners to notify such officers to pay over such moneys or fees at once, and if said officer shall fail to pay over such fees or moneys to the county treasurer as hereinbefore provided, it shall be the duty of said county commissioners, and they are hereby authorized, to commence suit in any court having jurisdiction against the officer (and his bondsmen) offending against the provisions of this act; said action shall be commenced in the name of the president of the board of county commissioners for the use of the common schools of their respective county.

Secs. 4290 to 4292. "An act to **increase the school fund** in Nebraska by penalties, forfeitures, fines, unclaimed fees, and estates." 1869, p. 158. In force February 15.

4290. That all **unclaimed fees and costs** which have been paid and not demanded for two years shall be paid in by the justice or clerk of any court under whose control such unclaimed fees and costs may be to the school fund of the respective county where such moneys belong.

4291. That all **fines, penalties,** and **forfeitures** not otherwise specifically appropriated shall be paid in to augment the common school fund of the county where such fines, penalties, and forfeitures properly belong.

4292. That all **property,** real or personal, which may now belong to this state **by escheat,** or that may hereafter escheat to this state for want of owners, shall be managed by the governor and the superintendent of public instruction, and such property and the proceeds thereof shall be placed in the school fund of the state.

Secs. 4293 to 4296. "An act to provide for the foreclosure and collection of the securities held by the **permanent school fund** of Nebraska." 1877, p. 208. In force June 1.

4293. That the state treasurer is hereby authorized and directed to institute suit on behalf of the state of Nebraska in the proper courts of the several counties for the **foreclosure and collection of** any and all **securities** held by the permanent school fund of this state, such suits to be prosecuted in the name of the state, against any and all persons indebted to said fund upon such securities, and the judgments recovered and the moneys collected thereon shall belong to said school fund.

4294. That the **attorney general** is hereby required, upon request of said state treasurer, to perform all necessary legal labor in the preparation and **prosecution** of any suit necessary to be brought in order to compel the payment of any of such securities or the interest due or to become due thereon.

4295. That upon the payment of any mortgage or other security held by said school fund, the state **treasurer** is hereby authorized and required to discharge and **cancel** the same of record in the manner required by law.

4296. If the governor, treasurer, and auditor of public accounts shall deem it for the best interests of the state to take a **conveyance** of the land mortgaged, to **secure** any **loan** of the permanent school fund heretofore made, or other land in lieu thereof, then and in that case the treasurer is hereby authorized to cancel and discharge of record any mortgage heretofore given to the state for the benefit of the permanent school fund when such conveyance of such lands as the said governor, treasurer, and auditor of public accounts may require to be made shall have been duly executed and delivered to the state for the benefit of the permanent school fund.

Secs. 4297 and 4298. "An act to place moneys received from the United States, known as five per cent funds, to the credit of the permanent school fund of the state." 1873. In force February 18. G. S., 999.

4297. That all moneys now in the state treasury or that may hereafter be received from the United States on account of the **five per cent fund** on cash sales shall be placed to the credit of the permanent school fund of the state.

4298. That the **governor** of the state be and he is hereby empowered and directed to receive from the United States all moneys that may be due or hereafter become due to the state, and it shall be his **duty to deposit** the same without delay in the treasury of the state, taking the treasurer's receipt therefor.

Sec. 4299. "An act to prevent the negotiation of bonds held by the state as a **permanent school fund** in case of loss by theft or otherwise." 1887, p. 614. In force April 4.

4299. That all **bonds** held by the state of Nebraska and belonging to the permanent school fund shall be **stamped** and signed by the state treasurer with the following words: This bond belongs to the permanent school fund of the state of Nebraska, and is not negotiable. Signed by ———, state treasurer.

Sec. 4300. "An act to provide for the transfer of moneys received by the treasurer on judgments in favor of the state to the permanent school fund." 1879, p. 177. In force June 1.

4300. That all moneys now in the treasury of the state arising from collections on judgments in favor of the state, as well as all moneys which shall hereafter be collected on such judgments, shall be transferred and paid into the permanent school fund and become a part thereof.

Sec. 4301. "An act to enable the state to realize upon judgments and mortgages held and owned by the state against any person or persons or body corporate whether security held on behalf of the permanent school fund or otherwise." 1877, p. 207. In force June 1.

4301. **[Judgments owned by state—Transfer.]**—That the state treasurer be and he is hereby authorized to sell, assign, and transfer any judgment held and owned by the state against any person or persons or body corporate, and to sell, assign, and transfer any security in the nature of a mortgage held on behalf of the permanent school fund, to any person or persons, or body corporate that will pay the full amount thereof, and such sale and assignment shall transfer to and confer upon such purchaser or purchasers all the rights of the state in such judgments or mortgages.

Secs. 4302 to 4306. "An act to provide for examination and adjustment of claims upon the state treasury in accordance with the provision of section nine (9) of article nine (9) of the constitution." 1877, p. 202. In force February 17.

4302. All claims of whatever nature upon the treasury of this state, before any warrant shall be drawn for the payment of the same, shall be examined and adjusted by the auditor of public accounts, and approved by the secretary of state; *Provided, however*, That no warrant shall be drawn for any claim until an appropriation shall have been made therefor.

4303. The auditor of public accounts shall keep a record of all claims presented to him for examination and adjustment, and shall therein note the amount of such claim as shall be allowed or disallowed, and in case of the disallowance of all such claims, or any part thereof, the party aggrieved by the decision of the auditor and secretary of state may appeal therefrom to the district court of the county where the capital is located, within twenty days after receiving official notice. Such appeal may be taken in the manner provided by law in relation to appeals from county courts to such district courts, and shall be prosecuted to effect as in such cases; *Provided, however*, That the party taking such appeal shall give bond to the state of Nebraska in the sum of two hundred dollars, with sufficient surety, to be approved by the clerk of the court to which such appeal may be taken, conditioned to pay all costs which may accrue to the auditor of public accounts by reason of taking such appeal. No other bond shall be required.

4304. In case the appeal shall be taken as provided in section two of this act, and on trial thereof the district court shall be of the opinion that the decision of the said officers was wrong either in fact or law, the said court shall reverse the same, and by its order and mandate require the said auditor to issue a warrant, in accordance with the provisions of section one of this act, upon the treasury for such an amount as shall be determined on the trial of such appeal to be legally due thereon. If either party feel aggrieved by the said judgment, the same may be reviewed in the supreme court as in other cases.

4305. No claim which has been once presented to such auditor and secretary of state, and has been disallowed, in whole or in part, shall ever again be presented to such officers, or in any manner acted upon by them but shall be forever barred, unless an appeal shall have been taken as provided in section two of this act.

4306. When a claim has been in **part allowed** by such officers, a warrant shall be drawn as in other cases where the whole claim shall be allowed.

See **22**, 47 (33 N. W., 711).

Secs. 4307 to 4323. "An act to provide in what courts the **state may sue and be sued.** 1877, p. 19. In force June 1.

4307. That the several **district courts** of the judicial districts of the state as now provided for and established by the constitution of the state, and of such judicial districts as may hereafter be provided by law, shall have **jurisdiction** to hear and determine the following matters: *First*—All claims against the state filed therein which have previously been presented to the auditor of public accounts, and have been in whole or in part rejected or disallowed. *Second*—All claims or petitions for relief that may be presented to the legislature, and which may be by any law, or by any rule or resolution of the legislature, or either house thereof, referred to either of said courts for adjudication. *Third*—Of all set-offs, counter-claims, claims for damages, liquidated or unliquidated, on the part of the state, against any person making a claim against the state, or against the person in whose favor such claim arose.

State cannot be sued upon claims by original action, but only by appeal from the decision of the auditor of public accounts and secretary of state. **7**, 188. Attorney general has no authority to employ attorney for the state. Contract to pay for such service void. **7**, 112. See **7**, 101.

4308. The **claimant** shall, in all cases, file a **petition**, setting forth the facts out of which his claim originally arose; the action of the legislature, or of either house thereof, or of any department of the government thereon, if any such has been had; what person or persons is the owner, or are owners thereof, or in anywise interested therein; that no assignment or transfer of the same, or any part thereof, or interest therein, has been made, except as stated in the petition; and that the claimant is justly entitled to the amount claimed therein from the state after allowance of all just credits and set-offs. The petition shall be verified as now required in civil actions in the district courts.

4309. **Summons** shall issue upon the filing of such petition, and shall be served upon the state by the sheriff of the county in which the petition may be filed, by **serving** the same upon the governor and attorney general; and in any action, the subject-matter of which, in whole or in part, relates to or grew out of the conduct of any special department or institution of the government, summons shall also be served by such sheriff upon the chief officer of such department or institution, and the return day thereof shall be as now provided by law in other actions in the district courts.

4310. The **court** in which such action may be brought shall **hear** and determine the matter upon the testimony according to justice and right, as upon the amicable settlement of a controversy, and shall render award and **judgment** against the claimant, or the state, as upon the testimony right and justice may require. Either party may take their judgment, by proceedings in error, to the supreme court for **review.**

4311. On the first day of each regular session of the legislature the **clerks** of the several district courts shall **transmit** a full and complete **statement** of all claims adjudicated in said courts during the two years previous, certified by himself and signed by the judge of such court, showing the claimant, the amounts claimed, and the judgment rendered for or against the claimant.

4312. The state may be **sued in** the district court of the **county** wherein the capital is situate, in any matter founded upon or growing out of a contract, expressed or implied, originally authorized or subsequently ratified by the legislature, or founded upon any law of the state. The petition in such a case shall be as provided in section two of this act, summons shall issue and be served in the same manner as hereinbefore provided, and the rules of pleading and **practice** in regard to other civil actions in the district court shall be observed in all actions by or against the state, as far as applicable, except as otherwise herein provided.

4313. In any civil **action** instituted **by** the **state,** except in actions for the collection of revenue, or for school or other trust funds, or against defaulting officers and their bondsmen, the defendant may, as a matter of defense, plead any **set-off,** counter-claim, or cross demand that he may have arising to him in his own right, and upon which an action could be maintained by him against the state.

4314. Civil actions to which the state is a party shall, on motion of counsel on behalf of the state, have **priority of trial** over other civil actions; and the several district courts having jurisdiction to try actions to which the state is a party shall have power to compel attendance of **witnesses,** as is now had by such courts in other civil actions, and on payment of fees and mileage by the party desiring their attendance, may compel the attendance of witnesses from any county within the state.

4315. Any person who corruptly practices, or attempts to practice, any **fraud** against the state **in** the **proof,** statement, establishment, or allowance **of** any **claim or** cause of action or any part thereof, in the matter out of which the same arose, shall *ipso facto* forfeit the same to the state; and it shall be the duty of the court in such case to find specifically that fraud was practiced, or attempted to be practiced, and to render judgment of forfeiture, and that the claimant be forever barred from prosecuting the same against the state, and for costs.

4316. The **fees** of sheriff, the clerk, or other officers, or of witnesses in claims or suits to which the state is a party, shall be the same, and be paid and taxed in the same manner as in other civil actions in the district courts.

4317. It shall be the duty of the **attorney general** to **appear** and defend actions or claims against the state. He may require the assistance of the district or prosecuting attorney of the district or county wherein the action is brought, and in any case of importance or difficulty the governor or chief officer of the department or institution to which it relates may retain and employ a competent attorney to appear on behalf of the state.

4318. The court by which any **judgment** is rendered against the state shall certify the same to the **auditor** of public accounts, who shall pay the same from any special fund or appropriation applicable thereto, and if none such have been provided or made, then from any appropriations made to the department or institution, relating to which the cause of action arose; *Provided,* That a certificate of the auditor of public accounts, or of the chief officer of such department or institution that the current appropriations will not permit the **payment** of such judgment without great public inconvenience, shall operate as a **stay** of such judgment until the adjournment of the next regular session of the legislature; and in case of such stay being claimed or taken, **interest** shall run on such judgment from its date at the rate of ten per centum per annum.

4319. In any action in which a **judgment** is rendered in any sum, or for costs against the claimant, the clerk of the court in which such judgment was rendered shall make and transmit a **certified copy** thereof on application of the attorney general, or other counsel on behalf of the state, to the clerk of the district court of any county within the state, and the same shall thereupon be **filed** and docketed in such court and become and be a judgment thereof; and all judgments against the claimant or plaintiff shall be collected by execution as other judgments in the district courts.

4320. Proceedings in **error** or **appeal** from the several district courts to the supreme court, as in other civil cases, may be taken by either party within the same limitations of time as in other civil actions. No appeal or **supersedeas** bond shall be required of the state, and the filing of notice signed by the governor, or chief officer of the proper department, or by the attorney general, or counsel for the state, of intention to take such proceedings, shall operate as a supersedeas of such judgment, and until the time that final judgment in the court of review be rendered in said cause, but the same shall not so operate longer than six months, unless proceedings in error or appeal are taken, and in case of the affirmance of such judgment or failure on the part of the state to take proceedings in error or appeal, after notice thereof, interest shall run and be computed on such judgment from its date.

4321. **Payment** and receipt of the amount due on any judgment rendered in any action brought under the provisions of this act shall be a full discharge of the state in such matter, and any final judgment shall forever **bar** further controversy upon the subject thereof.

4322. Every claim and demand against the state shall be forever barred, unless **action** be **brought** thereon within two years after the claim arose; *Provided*, That **claims** now **subsisting** shall not be barred until two years after the taking effect of this act, and every claim and demand in behalf of the state, except for revenue, or upon official bonds, or for loans or moneys belonging to the school fund, or loans of school or other trust funds, or to lands or interest in lands thereto belonging, shall be barred by the same lapse of time as is provided by the law in case of like demands between private parties; *Provided, however*, That in any action on behalf of the state the defendant may plead and avail himself of any **set-off** or counterclaim growing out off or connected with the same matter or transaction upon which action is brought against him.

Amended 1881, p. 211.

4323. **Change of venue** may be taken from the district court of the county in which the action is brought, as in other civil cases, on payment of the costs of removal, by the party making application for such change of venue.

CHAPTER 47.—REAL PROPERTY.

Secs. 4324 to 4379, except secs. 4328 and 4372, are taken from ch. 43, R. S. 1866, p. 280. Of the original chapter, secs. 18 to 20, 28, and 30 have been superseded by secs. 3158 to 3161 and 3167, ch. 39, Officers; sec. 59 was repealed by act of 1889, p. 483, and secs. 60 to 84 formed secs. 1783 to 1807 of ch. 17, Frauds. The remaining sections of the original chapter are arranged in order as above stated.

4324. **Deeds** of real estate or any interest therein in this state, except leases for one year or for a less time, if **executed** in this state, must be signed by the grantor or grantors, being of lawful age, in the presence of at least one competent witness, who shall subscribe his or her name as a witness thereto, and be acknowledged or proved and **recorded** as directed in this chapter.

Amended 1887, p. 561. Grantor must execute and acknowledge, or deed void. **5,** 176. Mistake or abbreviation does not necessarily invalidate a deed. **7,** 3. Not necessary that witness should be present at signing of deed if told immediately after by party subscribing that the instrument is their agreement. **4,** 120. One who purchases land for himself, though taking deed in name of sister-in-law, not a competent attesting witness thereto. **24,** 201 (38 N.W., 722). Deed of lands in this state made in another state, must be executed according to the laws of such state; and if no witness is required there, such deed is good here without being attested. **12,** 123 (10 N. W., 459). A deed executed, witnessed, and delivered is effectual to pass title, though not lawfully acknowledged or recorded. **12,** 155 (10 N. W., 545). As between the parties, and persons having notice, written contract for sale of land is valid although not witnessed or acknowledged. **11,** 192 (8 N. W., 389). Lease for five years is good between the parties without recording and the exclusion of such a lease as evidence is error. **10,** 605 (7 N. W., 271). A second lessee can take no advantage of defective execution of first lease if he had knowledge of same. **15,** 171 (17 N. W., 357). This statute applies to deeds of assignment for benefit of creditors. The record of an unacknowledged deed of assignment is a nullity. **10,** 513 (7 N. W., 282). Equity will relieve a party against contracts made while temporarily insane from the use of intoxicating liquors where such contracts have been procured by fraud. **6,** 405. Mere weakness of understanding alone does not incapacitate one from making a deed. **4,** 120; **4,** 117. See **9,** 283 (2 N. W., 878).

4325. The **grantor** must **acknowledge** the instrument to be his voluntary act and deed.

Certificate showing that grantors simply "acknowledged that they executed the deed" was held valid. Certificate must show that the execution was "voluntary." "Voluntary act" is sufficient without words "and deed." **13,** 340 (14 N. W., 417).

4326. The acknowledgment must be **made** or proved, if in this state, **before** a judge or clerk of any court, or some justice of the peace or notary public therein; but no officer can take any such acknowledgment or proof out of his territorial jurisdiction.

Officer cannot take acknowledgment outside of his territorial jurisdiction. **19,** 211 (27 N. W., 117). Acknowledgment no part of a deed itself; merely evidence of execution and authority for registration. **7,** 164. County clerk may take acknowledgment. **2,** 84.

4327. If **executed** and acknowledged or proved **in** any **other state,** territory, or district of the United States, it must be executed and acknowledged or proved either according to the laws of such state, territory, or district, or in accordance with the law of this state, and such acknowledgment shall be made before and certified by any officer authorized by the laws of such state, territory, or district to take and certify acknowledgments, or by a commissioner of deeds appointed by the governor of this state for that purpose.

Amended 1887, p. 562. If executed and acknowledged in a foreign state, must comply with the laws of such state. **5,** 175. Deed acknowledged before notary public in another state and attested with his seal is entitled to record without further authentication. **12,** 124 (10 N. W., 459).

4328. All **deeds heretofore executed** and acknowledged in accordance with the provisions of this act shall be and are hereby declared to be legal and valid.

This section added 1887, p. 562.

4329. In all cases provided for in section four of this chapter (if such acknowledgment or proof is taken before a commissioner appointed by the governor of this state for that purpose, notary public, or other officer using an official seal) the instrument thus acknowledged or proved shall be entitled to be recorded without further authentication; *Provided,* That in all other cases the deed or other instrument shall have attached thereto a **certificate of** the **clerk** of a court of record, or other proper certifying officer of the county, district, or state within which the acknowledgment or proof was taken, under the seal of his office, showing the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of such officer to be genuine, and that the deed or other instrument is executed and acknowledged according to the laws of such state, district, or territory.

Mortgage of land in this state executed in another state and acknowledged before an officer having no seal must have a certificate attached to it as provided in this section to entitle it be recorded in this state; and without such a certificate, the record thereof is a nullity and is not admissible in evidence. But if such record is erroneously admitted in evidence, the judgment will not be reversed, if *actual* notice of the mortgage by the purchaser be shown. 10, 479 (6 N. W., 753).

4330. If such deed be **executed in a foreign country,** it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, *charge d'affaires*, commissioner, commercial agent, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

4331. If the grantor die before acknowledgment, or if for any cause his attendance cannot be procured in order to make the same, or, having appeared, he refuses to acknowledge it, **proof of** the **execution** and delivery of the deed may be made by any competent subscribing witness thereto, before any officer authorized to take the acknowledgment; and the **witness** must state, upon oath, his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge he had signed the same; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.

4332. The officer has power to issue the necessary **subpœnas for** the subscribing **witnesses,** residing in the same county, to appear before him for the purpose aforesaid.

4333. Every person who, being served with a subpœna, and having been tendered the fees of a **witness** in a justice's court, shall, without reasonable cause, **refuse** or neglect **to appear,** or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall **forfeit** to the party injured one hundred dollars; and may also be committed to prison by the officer who issued such subpœna, there to remain without bail until he shall submit to answer upon oath as aforesaid.

4334. If all the subscribing **witnesses** shall be **dead,** or out of the state, such death or absence is first to be proved, and then the execution of the deed may be proved before such officer by proving the handwriting of the grantor, and of any subscribing witness to such deed.

4335. Any person interested in a **deed** that is **not acknowledged,** may, at any time before or during the proceedings before such officer, file in the office of the register of deeds of the county where the lands lie a copy of the deed, compared with the original by the register of deeds, which shall, for the space of thirty days thereafter, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded.

Amended 1887, p. 368.

4336. Every officer who shall take the **acknowledgment** of proof of any deed shall endorse a **certificate** thereof, signed by himself, on the deed; and in such certificate shall truly and specifically set forth the matters hereinbefore required to be so done, known or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

4337. Every **deed** acknowledged or proved, and certified by any of the officers before named, including the certificate specified in section five of this chapter [4329], whenever such certificate is required by law, may be read in **evidence** without further proof, and shall be entitled to be recorded. The record of a deed duly recorded, or a transcript thereof duly certified, may also be read in evidence with the like force and effect as the original deed, whenever, by the party's oath or otherwise, the original is known to be lost, or not belonging to the party wishing to use the same, nor within his control. Neither the certificate of the acknowledgment or of the proof of any deed, nor the record or transcript of the record of such deed, shall be conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of a deed shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such deed, nor the record thereof, shall be received in evidence until established by other competent proof.

Copy of record competent without proving loss of original where defendant in ejectment seeks to prove title in a stranger, even if there is a discrepancy between date of deed and acknowledgment. **27,** 310 (43 N. W., 110); **10,** 500 (6 N. W., 600).

4338. The **certificate** of the proof or acknowledgment of every deed, and the certificate of the genuineness of the signature of any officer, in the cases where such last mentioned certificate is required, shall be **recorded** together with the deed so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such deed, nor the transcript thereof, shall be read or received in evidence.

4339. Every deed entitled by law to be **recorded** shall be recorded **in the order** and as of the time when the same shall be delivered to the *register of deeds for that purpose, and shall be considered recorded from the time of such delivery.

Former act read "clerk" at *, 1887, p. 368.

4340. All **deeds,** mortgages, and other instruments of writing which are required to be **recorded** shall take **effect** and be in force from and after the time of delivering the same to the register of deeds for record, and not before, as to all creditors and subsequent purchasers in good faith without notice; and all such deeds, mortgages, and other instruments shall be adjudged void as to all such creditors and subsequent purchasers without notice whose deeds, mortgages, and other instruments shall be first recorded; *Provided,* That such deeds, mortgages, or instruments shall be valid between the parties.

Former act read "clerk." 1887, p. 369. Possession is notice. **5,** 161. A duly acknowledged and recorded deed is constructive notice to all persons through or under the grantor. **6,** 269; **18,** 198 (24 N. W., 684). Record is only notice of lands described in the conveyance, but an after-acquired judgment is subject to a mortgage describing the wrong lands. **7,** 288. Purchaser at execution sale of lands with sheriff's certificate, but who had not yet received his deed, will be protected against an unrecorded mortgage upon a bill of foreclosure filed before the time allowed a defendant to redeem his land had expired. **1,** 465. A deed prior to attachment, but not recorded until after, takes precedence of attachment if recorded before deed based on attachment sale. **19,** 97 (26 N. W., 713). See **8,** 372; **8,** 494.

4341. They shall **not** be deemed **lawfully recorded unless** they have been previously acknowledged or proved in the manner herein prescribed.

4342. **Deeds** and other instruments relating to or affecting the title of real estate in this state shall be **recorded in** the **county** in which such real estate, or any part thereof, is situated; but if such county is not organized, then the county to which such unorganized county is attached for judicial purposes.

4343. **No instrument** containing a power to convey, or in any manner to affect real estate, executed, acknowledged, or proved, and certified and recorded in conformity with the requirements of this chapter, can be **revoked** by any act of the party, or parties, thereto until the instrument of revocation is executed, acknowledged, or proved and certified, and filed for record with the register of deeds of the county in which the power is recorded.

Amended 1887, p. 369.

4344. It shall be no objection to the record of a deed that **no official seal** is appended to the recorded acknowledgment or proof thereof if, when the acknowledgment or proof purports to have been taken by an officer having an official seal, there be a statement in the certificate of acknowledgment or proof that the same is made under his hand and seal of office, and such statement shall be presumptive evidence that the affixed seal was attached to the original certificate.

Amended 1875, p. 90.

4345. The **copy of** any **record,** or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may, on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record.

4346. Any **will** of real estate which shall have been duly proved in the county court of any county in this state, and any such will, the proof of which shall be contested in that court and carried up by appeal or otherwise, and the validity of which shall be finally established, may with the certificate of proof annexed thereto, be **recorded** in the office of the register of deeds of the county or counties where the said real estate lies, in the same manner and with like effect as in case of deeds.

Amended 1887, p. 369.

4347. Any exemplification of any **decree** or judgment in partition on final decree in chancery affecting real estate may in like manner be **recorded** in the office of the register of deeds in any county in which any real estate described therein may be situated; such record or exemplification thereof shall be received in evidence and shall be as effective in all cases as the original exemplification would be if produced, and shall be open to the same objections.

Amended 1887, p. 370.

4348. On recording any such will, exemplification, or decree, the register of deeds shall **index** the same with the indices of deeds, and as near as may be as deeds are indexed, placing the name of the devisor, petitioner, or plaintiff with the grantors, and the devisee or defendant with the grantees.

Amended 1887, p. 370.

4349. Every **deed** conveying real estate which by any other instrument in writing shall appear to have been **intended** only **as** a **security** in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit such deed shall be made shall not derive any advantage from the recording thereof unless every writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage or conditional deed, be also recorded therewith, and at the same time.

To vary the legal import of a deed the evidence in reference to the understanding and intention of the parties must be clear, certain, and conclusive. **3**, 146. A deed absolute on its face, intended as security for the payment of a sum of money, will be construed as a mortgage. **1**, 344; **4**, 318; **6**, 391; **22**, 260 (34 N. W., 382). Grantee in instrument apparently a deed but really a mortgage, cannot make a valid lease of premises. **24**, 134 (37 N. W., 939). Where grantee in deed, absolute on its face but in fact a mortgage, conveys the property to his brother, who has notice sufficient to put him on inquiry, grantors may redeem. **24**, 81 (37 N. W., 941). See **3**, 352; **4**, 99; **24**, 692 (40 N. W., 129).

4350. Any **mortgage** that has been or may hereafter be recorded may be **discharged** by an entry on the margin of the record thereof, signed **by** the **mortgagee,** or his legal personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the register of deeds, or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Amended 1887, p. 370.

4351. Any **mortgage** shall also be **discharged** upon the record thereof **by** the **register** of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his legal personal representative or assignee, acknowledged or proved and certified as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged.

Amended 1887, p. 371.

4352. Every such **certificate,** and the proof or the acknowledgment thereof, shall be **indexed** in the order of mortgages, and recorded at full length; and in the record of discharge the register of deed shall make a reference to the book and page where the mortgage is recorded.

Amended 1887, p. 371.

4353. If any **mortgagee,** or his personal representative or assignee, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall for the space of seven days after being thereto requested, and after tender of his reasonable charges, **refuse** or neglect **to discharge** the same as provided in this chapter, or to execute or acknowledge a certificate of discharge or release thereof, he shall be **liable** to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in the proper action.

4354. The provisions of this chapter shall apply to the conveyance of all claims and improvements upon the **public lands.**

4355. No grant or conveyance of **lands,** or interest therein, shall be void for the reason that at the time of the execution thereof such lands shall be **in the** actual **possession of another,** claiming adversely.

4356. The **register** of deeds shall **mark** upon the **deed** or instrument, after recording the same, the book and page in which the same is recorded.

Amended 1887, p. 371.

4357. The governor of this state may commission so many **commissioners** in such of the states and territories of the United States, and in the District of Columbia, as he may deem expedient, in any one city or county, who shall continue in office four years, and shall have authority to take the acknowledgment and proof of the execution of any instrument in writing, conveying real estate, or any interest therein, or affecting the same, lying in this state, or of any assignment, transfer, power of attorney, satisfaction of a judgment, or of a mortgage, or of any other writing to be used or recorded in this state; and also to administer oaths and affirmations necessary to the proper discharge of their duties. *All acts performed in pursuance of the laws of this state or the laws of the territory of Nebraska, by commissioners of deeds heretofore appointed by the governor of the territory of Nebraska, shall be deemed and held to be valid and binding in law.

Amended and all after * added 1867, p. 51.

4358. Any **acknowledgment** or proof taken in pursuance of the powers hereby conferred, and in accordance with the provisions of this chapter, and certified by the commissioner, under his hand and official seal, upon the instrument mentioned in the preceding section, shall, when authenticated as hereinafter mentioned, be entitled to be recorded in the office of the county clerk, and shall have the same **force** and **effect,** and be as available as if taken or made before any officer by this chapter authorized to take proofs or acknowledgments, residing in this state; and any affidavit or affirmation so made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual to all intents as if taken and certified by an officer authorized to administer oaths residing in this state.

4359. Every **commissioner** appointed as aforesaid shall, before he performs any duty by virtue of his appointment and of this law, take and subscribe an **oath** or affirmation before some officer authorized to administer the same, well and faithfully to perform all the duties of such commissioner, under and by virtue of the laws of Nebraska, which oath or affirmation shall be filed in the office of the secretary of state of Nebraska. And every such commissioner shall also, before he enters upon the duties of his office, cause to be prepared an official **seal,** on which shall be designated his name and the words "a commissioner for Nebraska," together with the name of the state or territory, city, and county within which he shall reside, and for which he shall have been appointed, and shall transmit to and cause to be filed in the office of said secretary a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression together with his signature in his own proper handwriting.

4360. When any deed or other insturument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this chapter, before it shall be entitled to be used, recorded, or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the **certificate,** signed and sealed by each commissioner as aforesaid, a certificate under the hand and official seal of the **secretary of state** of Nebraska, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of administering such oath or affirmation, duly authorized to take the same, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine.

4361. No **commissioner** appointed under or by virtue of this law shall be authorized to take the proof or acknowledgement of any deed or instrument, or to administer any oath or affirmation, at any place other than that within which he shall reside, or for which he shall have been appointed; and every certificate of any such commissioner to any proof or acknowledgment taken before him, or to any oath or affirmation administered by him, shall **specify** the **day** on which, and the city, or **town,** and county within which the same was taken or administered; and without such specification, the said certificate shall be void.

4362. No acknowledgment of any conveyance having been executed shall be taken by any **officer,** unless the officer taking the same **shall know,** or have satisfactory evidence that **the person** making such acknowledgment is the person described in and who executed such conveyance.

4363. The **recording** of an **assignment of** a **mortgage** shall not, in it self, be deemed notice of such assignment to the mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Assignment of part of the notes secured by mortgage is an assignment *pro tanto* of the mortgage. **20,** 503 (30 N. W., 686). See **4,** 520.

4364. All **certificates of** the register and receiver of any United States **land office** of the entry or purchase of any tract of land, and all letters **patent** of land from the United States of land lying in this state, shall be **recorded** in the county in which the land lies, and where any patent as above contains descriptions of land lying in more than one county, or otherwise, it shall be lawful to record in any county the whole of the descriptions of land situated therein without recording all descriptions contained in said patent; *Provided,* That such record shall include all the granting or conveying part or language of said patent, and the records of such certificates and patents, and all copies thereof so recorded, duly certified by the register of deeds, shall be *prima facie* evidence of the existence of such certificates and patents, and conclusive evidence of the existence of such record.

Amended 1883, p. 264; 1887, p. 372.

4365. Every **officer** within this state authorized to take the acknowledgment or proof of any conveyance, and every county clerk who shall be guilty of knowingly stating an untruth, or guilty of any **malfeasance** or fraudulent practice in the execution of the duties prescribed for them by law, in relation to the taking or the certifying the proof or acknowledgment, or the recording or certifying of any record of any such conveyance, mortgage, or instrument in writing, or in relation to the canceling of any mortgage, shall, upon conviction, be adjudged guilty of a misdemeanor, and be subject to punishment by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and shall also be liable in damages to the party injured.

4366. Any **real estate** belonging to a **married woman** may be managed, controlled, leased, devised, or conveyed by her by deed, or by will, in the same manner and with like effect as if she were single.

Where husband and wife formerly owned land in severalty, the land being sold, the proceeds deposited in bank in husband's name, afterwards land purchased and deed made to husband, and when suit brought against the husband he deeds land to wife, held, that such deed is void. **6,** 265. Contracts made with reference to the faith and credit of her separate estate binding. Married women may mortgage her dower interest. **8,** 269.

4367. **To convey** her right of **dower,** she must execute a deed with or without her husband.

4368. The term "**real estate,**" as used in this chapter, shall be construed as co-extensive in **meaning** with "lands, tenemens, and hereditaments," and as embracing all chattels real, except leases for a term not exceeding one year.

Does not apply to school land leases, which are personal property. **26,** 316 (41 N.W., 1117)

4369. The term "**purchaser,**" as used in this chapter, shall be **construed** to embrace every person to whom any real estate or interest therein shall be conveyed for a valuable consideration, and also any assignee of a mortgage or lease, or other conditional estate.

4370. The term "**deed,**" as used in this chapter, shall be **construed** to embrace every instrument in writing by which any real estate or interest therein is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills, and leases for one year or for a less time.

In deed which does not state where the land is, but which is acknowledged in Douglas county, the presumption is that the land is in that county. 5, 524. For quitclaim deed, see 21, 216 (31 N. W., 661).

4371. The preceding section shall not be construed to extend to a **letter of attorney,** or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when proved or acknowledged in the manner prescribed in this chapter, may be recorded in the office of the register of deeds of any county in which the real estate to which such power or contract relates may be situated; and when so proved or acknowledged, and the record thereof, when recorded, or the transcript of such record, may be read in evidence, in the same manner and with the like effect as a conveyance recorded in such county.

Amended 1887, p. 372. Form held good. **20,** 219 (29 N. W., 468). See **5,** 304.

Sec. 4372. "An act providing for the **recording** of a duly authenticated copy of the record of any **power of attorney** recorded in the county clerk's office in any county of the state. 1883, p. 265. In force June 1.

4372. That a duly authenticated **copy of** the **record** of any power **recorded** in this state shall be entitled to record, and shall operate to all intents and purposes, having the same force and effect, as the record of the original instrument. Such copy shall be duly authenticated only when there shall be attached thereto a certificate of the register of deeds under his hand and official seal, setting forth that the same is a true copy of the original record in his office, the date of the filing of the original instrument, and the volume and the page where the same is recorded; *Provided,* That it shall be unlawful for any register of deeds in this state to give a certified copy of any power of attorney which has been revoked and the revocation thereof filed in his office, without also stating the facts of such revocation in his certificate, and any person violating any of the provisions of this act shall be fined in any sum not exceeding one hundred dollars.

Amended 1887, p. 373.

4373. A **married woman** shall not be bound by any covenant in any joint **deed** of herself and husband.

4374. The term "heirs," or other technical **words of inheritance,** shall not be necessary to create or convey an estate in fee simple.

The common law rule is not in force in this state, and words of inheritance are not necessary to convey the fee. 25, 321 (41 N. W., 186).

4375. Every **conveyance** of real estate shall **pass all** the **interest** of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used.

4376. When a deed purports to convey a greater interest than the grantor was at the time possessed of, any **after-acquired interest** of such grantor to the extent of that which the deed purports to convey shall accrue to the benefit of the grantee; *Provided, however,* That such after-acquired interest shall not inure to the benefit of the original grantor, or his heirs or assigns, if the deed conveying said real estate was either a quitclaim or special warranty, and the original grantor in any case shall not be stopped from acquiring said premises at judical or tax sale, upon execution against the grantee or his assigns, or for taxes becoming due after date of his conveyance.

All after * added 1875, p. 90.

4377. **Estates** may be created to commence at a **future** day.

4378. In the **construction of** every **instrument** creating or conveying, or authorizing or requiring the creation or conveyance of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true interest of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law.

Courts will try to give effect to the true intent of the parties. **23,** 473 (36 N. W., 659).

4379. In the absence of stipulations to the contrary, the **mortgagor** of real estate retains the legal **title** and right of possession thereof.

Mortgagor not liable for rents and profits while in possession. **7,** 453. And the mortgagee has no interest in the real estate which he can convey by lease. **10,** 302 (4 N. W., 986). Mortgage does not convey title, but is a mere *lien* on property. And mortgagee does not become assignee of covenants running with the land. **11,** 252 (9 N. W., 95). See **24,** 463 (39 N. W., 418).

SECS. 4380 to 4390. "An act for the relief of **occupants and claimants,**" etc. 1883, p. 249. In force February 23. (Repealing G. S., ch. 51.)

4380. That in all cases where any person claiming title to real estate, whether in actual possession or not, for which such person can show a plain and connected title, in law or equity, derived from the records of some public office, or from the United States, or from this state, or derived from any such person by devise, descent, deed, contract, or bond, such person or **persons** claiming or **holding** as aforesaid, shall **not** be **evicted** or turned out of possession of such real estate, nor shall his claim or title be set aside or canceled by any court in any proceedings brought or commenced by any person setting up and proving an adverse and better title or claim to such real estate, **until** such person claiming as aforesaid shall be fully **paid** the **value of** all lasting and valuable **improvements** made upon such real estate by such claimant or by those under whom he claims, **and** also for all **taxes** and assessments paid upon said real estate by such claimant, and the persons under whom he claims, with interest thereon at the same rate of interest as provided by law for delinquent taxes, and for all sums of money paid by such occupant or claimant, or those under whom he claims, to redeem such real estate from any sale or sales for non-payment of taxes previous to receiving actual notice by the commencement of suit on such adverse title or claim by which such eviction or cancellation may be had, unless such occupant or claimant shall refuse to pay the person so setting up and proving an adverse and better title the value of such real estate without improvements made thereon as aforesaid, upon the demand of the successful claimant as hereinafter provided.

Vendee under contract providing for a forfeiture of all improvements in case of non-performance on his part, is not, in case of eviction, entitled to benefits of this act. **12,** 290 (11 N. W., 334). See **19,** 452 (27 N. W., 442); **19,** 705 (28 N. W., 301).

4381. [**Occupants.—Who are.**]—Any person in possession of or claiming any real estate under a certificate of entry or under the homestead or pre-emption laws of the United States, as well as the persons enumerated in the first section of this act, shall be considered as having sufficient title to demand the value of improvements, and to demand the amount of all taxes and assessments paid by such claimant or those under whom he claims, under the provisions of the first section of this act. The tax certificates and the tax receipts of the county treasurer shall, for the purposes of this and the preceding section provided, be conclusive evidence of the assessment, levy, and payment of the taxes on such real estate, for the purpose of ascertaining the amount of the taxes paid by such occupant or claimant.

A person claiming under a tax deed is entitled to pay for improvements, etc. **26,** 670 (42 N. W., 875).

4382. The court rendering judgment or decree in any case provided for by this act against any occupant or claimant shall, at the request of such occupant or claimant, issue an order to the sheriff of the county wherein such real estate is situated, commanding him to summons three disinterested freeholders of such county, whose duty it shall be to **appraise** such real estate and the **improvements** aforesaid at their cash value as hereinafter provided. Such appraisers shall take and subscribe an oath to impartially appraise the said real estate and improvements, which oath shall be filed with the clerk of the court issuing such order. The order thus issued to the sheriff shall be accompanied by written instructions from the court to the appraisers, necessary to carry out the provisions of this act. Such appraisers shall be allowed the same fees and mileage as jurors are allowed in the district court.

Final judgment should be rendered prior to taking any steps for the ascertainment of the value of the improvements. And where party in ejectment elects to proceed under this statute, he is estopped from having original judgment reviewed on error. **11,** 375 (9 N. W., 546).

4383. The **appraisers** shall jointly **proceed** at once, after service of said order on them, to view the real estate in question, and to assess the value of all lasting and valuable improvements on the same, previous to the party receiving actual notice as aforesaid of said adverse claim. They shall also assess the net anual value of the rents and profits which the occupant or claimant has received after having received notice of the successful claimant's title by service of process, and they shall deduct the amount thereof from the estimated value of the improvements aforesaid. They shall also assess the value of the land in question at the time such occupant went intopossession thereof, or such claimant commenced to pay the tax thereon, as the same may be.

12, 544 (11 N. W., 851).

4384. The appraisers shall make **report** in writing of their appraisement and deposit the same in a sealed envelope with the clerk of such court, within the time required by the court, and if either party shall think himself aggrieved by such appraisement he may file **objections** thereto at the term to which the same is returned, if returned in term time, ten days before such term adjourns, and if such report is made in vacation, or if made in term time, less than ten days before such term adjourns, then such objections may be filed on or before the second day of the term next ensuing. Upon the hearing of such objections, if the court is of the opinion that injustice has been done by such appraisement, the same shall be set aside and a **new appraisement** ordered. New appraisers shall thereupon be summoned and like proceedings had as hereinbefore provided.

4385. If no objections are made to the appraisement, or if made and overruled, the court shall proceed without pleadings to ascertain the amount of taxes paid by the occupant or claimant, with interest as hereinbefore provided for. If the appraisement reported to the court shall show a sum in favor of the occupant or claimant against whom such a **decree** or judgment is rendered, the amount of taxes and interest as ascertained by the court shall be added thereto, and decree entered therein in favor of such unsuccessful occupant or claimant against the said person proving a better title. Such decree shall constitute and be a lien upon said real estate, but in case the appraisement shall show a balance due the person proving a better title, the amount of such balance shall be deducted from the amount found due the occupant or unsuccessful claimant for taxes and interest, and decree be entered for the difference in favor of such occupant or claimant. If upon the whole finding there shall appear a balance due the successful claimants, judgment shall be rendered in his favor therefor.

4386. If upon the **final hearing** there shall be found a balance in favor of the occupant or unsuccessful claimants, the person proving the better title may either demand of the occupant or claimant the value of the real estate without improvements as shown by the appraisement, and **tender** a general warranty deed for the real estate in question to such occupant or claimant or he may pay into court the balance so found due such occupant or claimant within such time as the court shall allow in its final decree.

4387. If the successful **claimant** shall **elect to pay** and does pay to the occupant or claimant the balance found due him on the final hearing within such time as the court shall direct, then a **writ** of **possession** shall be issued in his favor against such occupant, or decree shall be entered against such unsuccessful claimant, as the case may require.

4388. If the successful **claimant** shall **elect to receive** the value of the real estate without improvements, to be paid by the occupants or claimant within such time as the court shall direct, and shall tender a general warranty deed for such real estate to the occupant or claimant, and such occupant or claimant shall refuse or neglect to pay said sum of money to the successful claimant within the time allowed by the court for that purpose, then such successful claimant shall deposit with the clerk of the court the amount found due the occupant or claimant, and thereupon a writ of possession shall be issued in favor of such successful claimants, or decree shall be entered in his favor as the case shall require.

4389. The occupant or claimant shall in no case be evicted from the possession, or deprived of his right in the premises, except as provided in the two preceding sections, and in case the successful claimant shall **neglect to elect** to take said real estate with improvements, or to convey the same to the occupant or claimant, within such time as the court shall direct, then **decree** shall be entered in favor of the occupant or claimant upon his paying into court the value of the real estate without improvement. Such decree shall have the effect to transfer and convey to such occupant or claimant the title and rights of the successful claimant.

4390. This act shall apply to all **suits** now **pending** or hereafter brought, wherein any of the claims or rights herein set forth shall be demanded, and such demand for improvements or taxes may be made upon the overruling by the court of a motion for a new trial, or in case the suit is one in equity, then such demand may be made within three days after the entry of decree. In suits now disposed of in which the unsuccessful occupant or claimant would have been entitled to the relief herein provided for, such occupant or claimant may make such application to the court within six months after this act shall become a law; *Provided, however*, That all of the provisions of this **act** shall be **limited** and restricted to those cases where the title to the real estate in controversy is derived from some source other than that which comes from such tax titles, tax certificates, tax receipts, or the payment of taxes by any person claiming any interest in or title to such real estate, by reason of such tax deeds, or tax titles, tax certificates, or tax receipts.

Request may be made after decision in supreme court in original case. **17**, 455 (23 N. W., 353, 511). "Such tax titles," etc., construed. **26**, 673 (42 N. W., 875).

Secs. 4391 to 4395. "An act to **quiet title** to real estate." 1873. In force February 24. G. S., p. 882.

4391. That an **action** may be brought and prosecuted to final decree, judgment, or order by any person or persons, whether in actual possession or not, claiming title to real estate against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and **quieting** the **title** to said real estate.

Party not in possession must have the legal title; party in possession without legal title must have been in possession for considerable time and that his right is threatened, or must have established his right by repeated litigation. 7, 376. One having but a leasehold interest may proceed under this act. **15**, 67 (17 N. W., 257). Neither party entitled to two trials. **28**, 670 (44 N. W., 872). Either party is entitled to a jury. **25**, 184 (41 N. W., 117); **24**, 317 (38 N. W., 797).

4392. All such **pleadings** and proofs and subsequent **proceedings** shall be had in such action now pending or hereafter brought as may be necessary to fully settle and determine the question of title between the parties to said real estate, and to decree the title to the same, or any part thereof, to the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment, or order into effect.

Plaintiff must set out the title he calls a cloud. **15**, 68 (17 N. W., 257). See **24**, 655 (39 N. W., 835).

4393. Any person or persons having an interest in **remainders** or **reversion** in real estate shall be entitled to all the rights and benefits of this act.

See **28**, 653 (44 N. W., 991).

4394. If the **defendant** or any one of several defendants shall appear and **disclaim** all title and interest adverse to the plaintiff such defendant shall recover his costs. In other cases the costs shall abide the final decree, judgment, or order in the action.

4395. The provisions of this **act** shall **not** in any respect **apply** to the settlement, partition, or division of real estate among the heirs of a decedent where the same is provided for by the intestate laws of this state.

Secs. 4396 to 4399. "An act **restricting non-resident** aliens and corporations not incorporated under the laws of Nebraska in their **right to** acquire and **hold real estate**," etc. 1889, p. 483. In force March 16. (Repealing chapters 62 and 65, Laws 1887).

4396. **Non-resident aliens** and corporations not incorporated under the laws of the state of Nebraska are hereby prohibited from acquiring **title to** or taking **or** holding any **lands** or real estate in this state by descent, devise, purchase, or otherwise, only as hereinafter provided, except that the widow and heirs of aliens who have heretofore acquired lands in this state under the laws thereof, may hold such lands by devise or descent for a period of ten (10) years and no longer, and if at the end of such time herein limited, such lands, so acquired, have not been sold to a *bona fide* purchaser for value, or such alien heirs have not become residents of this state, such lands shall revert and escheat to the state of Nebraska, and it shall be the duty of the county attorney in the counties where such lands are situated to enforce forfeitures of all such lands as provided by this act.

State alone can divest title. **28**, 672 (44 N. W., 873.)

4397. Whenever any such lands shall revert and **escheat** to the state of Nebraska, as provided in this act, it shall be the **duty of** the **county attorney** of the county in which such lands are situated, to proceed against such alien in the district court of the county where the land is situated for the purpose of having such forfeiture declared. Service of summons may be had upon the non-resident alien defendants by publication as provided in the statutes of Nebraska for the service of summons by publication in cases of foreclosure of mortgages, and the court shall have power to hear and determine the questions presented in such cases and to declare such lands escheated to the state; and when such forfeiture shall be declared by the district court, it shall be the duty of the clerk of the court to notify the governor of the state that the title to such lands is vested in the state by the decree of the said court; and the clerk of the court shall present the auditor of public accounts with the bill of costs incurred by the county in prosecuting such case, who shall issue a warrant to the clerk of the court on the state treasury to repay the county for such costs incurred. The heirs or persons who would have been entitled to such lands, shall be paid by the state of Nebraska the full value thereof, as ascertained by appraisement upon the oaths of the judge, treasurer, and clerk of the county where such lands lie, and such lands shall then become subject to the law, and shall be disposed of as other lands belonging to the state; *Provided,* That the expense of the appraisement shall be deducted from the appraised value of the land.

4398. Any non-resident **alien** who owns land in this state at the time this act takes effect, **may dispose** of the same during his life to *bona fide* purchasers for value, and may take security for the purchase money with the same rights as to securities as a citizen of the United States.

4399. This **act** shall not, nor shall anything in the statutes of Nebraska, prevent the holders, whether non-resident aliens or corporations not organized under the laws of the state of Nebraska, of liens upon real estate or any interest therein, whether heretofore or hereafter acquired, from holding or taking a valid title to the real estate subject to such liens, nor shall it prevent any such alien or corporation from enforcing any lien or judgment for any debt or liability now existing, or which may hereafter be created, nor from becoming a purchaser at any sale made for the purpose of collecting or enforcing the collection of such debt or judgment; *Provided, however,* That all lands so acquired shall be sold within ten (10) years after the title thereto shall be perfected in such non-resident alien or foreign corporation, and in default of such sale within such time, such real estate shall revert and escheat to the state of Nebraska, as provided in this act; *Provided further,* That the provisions of this act shall not apply to the real estate necessary for the construction and operation of railroads; *And provided further,* That nothing in this act shall be **construed** to prohibit any non-resident alien or foreign corporation from purchasing and acquiring title to so much real estate as shall be necessary for the purpose of erecting and maintaining manufacturing establishments; *And provided further,* That the provisions of this act shall not apply to any real estate lying within the corporate limits of cities and towns.

Secs. 4400 to 4404. "An act to provide **security** to the public **against errors,** omissions, and defects **in abstracts** of title to real estate and for the use of abstracts in evidence." 1887, p. 565. In force July 1.

4400. It shall be unlawful for any person or persons to engage in the business of **compiling abstracts** of titles to real estate in the state of Nebraska, and demand and receive pay for the same, without first filing in the office of the county judge of the county in which such business is conducted, a bond to the state of Nebraska in the penal sum of ten thousand dollars ($10,000), with not less than three sureties, residents of the county, to be approved by such county judge, conditioned for the payment by such abstracters of any and all damages that may accrue to any party or parties by reason of any error, deficiency, or mistake in any abstract or certificate of title made and issued by such person or persons.

4401. When any **abstracter** shall have duly filed his **bond** as above provided, he shall be entitled to receive a certificate from such county judge that said bond has been by him duly approved and filed for record, which **certificate** shall be valid so long as such abstracter shall maintain his surety upon the bonds, as herein provided for, unimpaired, and the possession of such valid certificate, at the date of issuance of any abstract, shall entitle such abstract of title to real estate, certified to and issued by such abstracter, to be received in all courts as *prima facie* evidence of the existence of the record of deeds, mortgages, and other instruments, conveyances, or liens affecting the real estate mentioned in such abstract, and that such record is as described in said abstract of title.

4402. Any party to a civil action who may desire to use in **evidence** at the trial thereof any **abstract** of title to real estate as herein provided, shall furnish to the opposing party or his attorney a copy of such abstract at least three days before the trial of said action, and in case such real estate be not in the county where such trial is to take place, then such copy shall be so furnished to the opposing party or his attorney, to allow a sufficient number of days, such opposing party to proceed by the usual route of travel to the county seat of the county where such real estate may be situated and return to the place of trial, in addition to the three days for preparation above provided for.

4403. The **bond** herein provided for may run during the continuance of said person or persons in said abstract business, not to exceed five years, and the county judge of the county where the bond herein provided for may be filed may at any time, upon complaint of any owner of real estate in his county, require such abstracter upon ten days' notice to give **additional security** upon said bond, and show cause why the same should not be declared invalid and the certificate thereof recalled and annulled; and if within such time the additional security to be approved by said county judge be not furnished, and no sufficient reason be shown to the judge why the same should not be required, then said bond shall be declared invalid, and the certificate thereof recalled and annulled.

4404. The **abstracter** or complainant may have an **appeal** to the district court from such decision of the judge by preserving the evidence taken at the hearing, which shall be certified up by such judge, and such appeal shall be summarily decided by the court upon such evidence, and the cost of such appeal, including the furnishing of said evidence, shall be adjudged against the defeated party.

Sec. 4405. "An act entitled 'An act providing for the **record of certain papers** and documents' in the county clerk's office and to make the same evidence." 1885, p. 298. In force March 5.

4405. Whenever any person referred to in the third section of the act of congress entitled "An act to provide for the location of certain confirmed land claims in the state of Missouri, and for other purposes," approved June 21, 1828 (11 Statutes at Large, 294 and 295), has had a **private land claim** which has not been located and satisfied, has died before making the entry therein authorized of public land, and his right so to do has been sold by order of the probate court of the county and state of his residence, and the entry of public lands in this state has been made by the purchaser or his grantee, and letters patent of the United States have issued to the original claimant or his legal representatives, it shall be competent for the owner of the land under the patentee to cause to be **recorded** in the book of deeds in the office of the county clerk of the county in which the land is situate, a copy of the proceedings of the said probate court upon which the right of the original claimant was sold as aforesaid, together with the proceedings of the several officers on said sale, which copy shall be duly certified by the clerk of said court or of any court which has succeeded to the jurisdiction of said probate court, and in which the records of said probate court are by law deposited, and the record so made in the county clerk's office shall be taken and held by all courts of this state as evideuce of the transfer of the right to make such entry in the land office, and of the title of the purchaser at said probate sale, and his grantees under the said sale to the lands patented as aforesaid, and a copy of the said record in the county clerk's office, certified by that officer, may be read in evidence with the like force and effect as the original papers.

Secs. 4406 and 4407. "An act to provide for the disposition of **unclaimed lots** entered in trust by corporate authorities. 1867, p. 94. In force June 24.

4406. That all persons who shall be or may become the **owners of** any equities of title in and to any town **lot** or lots or land within any incorporated town or city in this state, by virtue of which they shall be entitled to **demand** and receive from the corporate authorities a title in fee simple to the same, shall present their claims and make demand for their **deed,** within sixty days from the passage of this act, in all those cases where the lot, lots, or lands have already been unclaimed for the period of two years; and in all cases of sites of corporate towns or cities which may be hereafter entered the property shall be claimed and the deed demanded within three years after such entry; *Provided*, That if any person shall neglect to comply with the terms of this act as aforesaid, the title in and to such realty shall vest in the corporation as fully, and to all intents and purposes, as though conveyed to said town or city by deed of general warranty.

4407. This act shall be construed to apply to rights acquired previous to the entry of the land; and in no case to rights of parties acquired by virtue of any tax sale.

CHAPTER 48.—SALVAGES.

Secs. 4408 to 4416. "An act regulating salvages." 1883, p. 285. In force June 1.

4408. When any boat, raft, lumber, staves, shingles, logs, rails, posts, cordwood, or other valuable timber shall be lost or wrecked upon any river or creek, any person may take up and secure the same.

4409. When any person shall claim such property and shall prove his right to the same before any justice of the peace of the county where said property was taken up, the same shall be restored to such owner upon payment to salvor of a premium of salvage equal to ten per centum of the valuation of such property, to be determined by such justice of the peace, if not agreed upon by such owner and salvor, and the legal costs of proceeding.

4410. When any person shall take up and secure any such property of less value than ten dollars, he may return and dispose of the same to his own use, provided the owner does not claim the same within ten days after the taking up of such property.

4411. When such property shall be of greater value than ten dollars, the justice of the peace shall, by warrant under his hand, direct any constable to sell the same at public vendue, giving ten days' notice, by three advertisements put up in public places in his precinct, of the time and place of sale.

4412. The owner, on proof of ownership before any justice of the peace, may have restitution of his property at any time before the sale is made, on payment of salvage and costs.

4413. If no claimant appears on or before the time of the sale, the justice shall allow to the taker-up his salvage according to this act, and the balance of said money, after paying the costs, shall be paid by said justice into the treasury, for the benefit of public schools of such county.

4414. When it may be necessary to ascertain the value of any property so taken, any justice of the peace of the proper county, on the application of any party concerned, may appoint three freeholders, who, being sworn, shall ascertain and assess the value of such property, and return their valuation to such justice.

4415. Within two days after the taking up and securing of any such wrecked property, the salvor shall make oath before a justice of the peace of the precinct in which such property is taken up or secured, that the property was lost or wrecked and in a perishable condition, and that he was not directly or indirectly instrumental in causing the property to be so wrecked or lost, and also the quantity, quality, and estimated value of such property, and the time and place of taking up, and that he has not disposed or secreted any part of the same. If such property be not claimed and proved by the owner within ten days after the filing of such affidavit, such justice shall, on the application of such salvor, issue a warrant directed to any constable of said township, directing him to sell the same at public vendue, first giving ten days' notice, by three advertisements put in public places in his precinct, of the time and place of sale; and if such property be not claimed and proved by the owners, and the salvage and costs paid, then such property shall be sold and the proceeds shall be returned to such justice, who shall pay to the proper parties the salvage and costs of proceeding; and the remainder, if any, shall be paid into the county treasury for the benefit of public school fund of such county, unless the owner shall make proof of his right to the same within three months;

Provided, If the name or initial of the owner of any log, toy, or other property, be plainly marked or branded thereon, then the salvor shall, in addition to the foregoing proceedings, also give notice to the owner, if known from such mark or brand.

4416. If any person shall retain, sell, or dispose of any such property wrecked, lost, or adrift, without complying with each and all of the requirements of this act, such person shall be deemed guilty of the larceny of such property, and on conviction thereof shall be punished as for the unlawful taking, stealing, and carrying away of such property.

CHAPTER 49.—SEALS.

Secs. 4417 and 4418 formed ch. 49, R. S. 1866, p. 376.

4417. The use of **private seals** upon all deeds, mortgages, leases, bonds, and other instruments and contracts in writing is hereby **abolished,** and the addition of a private seal to any such instrument or contract in writing hereafter made shall not affect its equity or legality in any respect.

See **20,** 137 (29 N. W., 308).

4418. All deeds, mortgages, or other **instruments** in writing, for the conveyance or incumbrance of real estate, or any interest therein, which have **heretofore** been **executed, without** the use of a private **seal** are, notwithstanding, hereby declared to be legal and **valid** in all courts of law and equity in this state and elsewhere.

CHAPTER 50.—STATE HISTORICAL SOCIETY.

Secs. 4419 to 4421. "An act to aid and encourage the 'Nebraska State Historical Society.'" 1883, p. 340. In force June 1.

4419. That the "**Nebraska State Historical Society,**" an organization now in existence—Robt. W. Furnas, president; James M. Woolworth and Elmer S. Dundy, vice presidents; Samuel Aughey, secretary, and W. W. Wilson, treasurer, their associates and successors—be and the same is hereby recognized as a state institution.

4420. That it shall be the duty of the president and secretary of said institution to make annually **reports** to the governor, as required by other state institutions. Said report to embrace the transactions and expenditures of the organization, together with all historical addresses which have been or may hereafter be read before the society or furnished it as historical matter, or data of the state or adjacent western regions of country.

4421. That said **reports,** addresses, and papers shall be **published** at the expense of the state, and distributed as other similar official reports, a reasonable number, to be decided by the state and society, to be furnished said society for its use and distribution.

CHAPTER 51.—STATE PRINTING.

Secs. 4422 to 4436. "An act to establish a **printing law** for the state of Nebraska," etc. 1883, p. 257. In force December 1, 1884. (Repealing Laws 1867, p. 64, *et seq.*)

4422. The auditor of public accounts, state treasurer, and secretary of state shall constitute a state **printing board,** and shall have general supervision over the matter of state printing, in the manner provided by this act.

4423. The **printing** of all bills for the legislature, with such matters as may be ordered by either house thereof, to be printed in bill form, shall be let in one **contract.** The printing and binding of the senate and house journals shall be let in another contract. The printing and binding of reports of state officers authorized by law to be printed, and all other reports and documents ordered by the legislature, except such as enter into and form a part of the journals, shall be let in another contract. The printing and binding of the laws, joint resolutions, and memorials enacted by the legislature shall be let in another contract. And the printing and binding of all blanks, blank books, and circulars required to be furnished by the officers of the executive department of the state shall be let in another contract.

4424. The **contracts** for printing of bills and reports of state officers shall be **let** on the second Tuesday in December for a period of two years following. The contract for the publication of laws and journals of each regular and special session shall be let within twenty days after the final adjournment of such session. The contract for the furnishing of blanks, blank books, and circulars shall be let within thirty days after the adjournment of each regular session of the legislature, for the period of two years following.

4425. Immediately after the adjournment of any regular or special session of the legislature, the **board** shall **advertise** in five newspapers of general circulation, printed in the state, for proposals for printing of laws and journals of such session, and twenty days prior to the time fixed in the preceding section for the letting of other contracts shall similarly advertise **for proposals** for the letting of such other contracts. The advertisement shall briefly refer to said letting, stating the number of copies of the different kinds of work, the style and size thereof, the quality of paper and binding required, and samples of the same, and that copy of work to be done may be seen at the office of the secretary of state. The advertisement shall also state that the board reserves the right to reject any and all bids.

4426. It shall be the duty of the **board** to **decide** on the kind, **style,** and form, the amount of printed matter on a page, the kind and quality of paper, the size of type, the quality and style of binding, and all materials necessary for the publication of the laws, journals, reports of state officers, and bills, and also place samples and copy of work to be done of the same on exhibition in the office of the secretary of state, and all bids and contracts shall strictly conform thereto. Each bid shall state what the bidder is willing to do the work complete, including composition, paper, press work, stitching, binding, lettering, and all material entering into the work required.

4427. Within twenty days after adjournment of each regular session of the legislature, the **officers** in any department of the government, whose expenditures in any one year exceed the sum of one hundred dollars ($100), for **blanks,** blank **books,** or circulars, including revenue books and blanks, shall file with the secretary of state samples of the kinds and styles of work, with the number of copies of blank books, and number of quires of blanks required of each sample and within ten days thereafter the furnishing of the same shall be let by contract under the direction of the board in the same manner as the other contracts herein provided for are let.

4428. The **proposal** or bid for any of the contracts aforesaid shall not be considered unless the same shall be accompanied by a **bond** in the sum of five-thousand dollars ($5,000), with two or more sureties, that in case the party proposing for any such contract shall be awarded the same such party will, within five days after the award to him of such contract, enter into bonds for the faithful performance thereof.

4429. It shall be the duty of the secretary of state to give immediate notice to the **successful bidder** that his proposal has been accepted, and each successful bidder shall in five days thereafter enter into **bonds** to the state in the sum of not less than twice the amount of the contract price for each and every contract so awarded to him, with at least two good and sufficient sureties, to be approved by said board, conditioned for the faithful performance, pursuant to this act, of that contract for which he has been adjudged the successful bidder; and if he fail to so give bond within the time allowed, then the contract shall be given to the next lowest bidder who will give bond as aforesaid, or the board may in their discretion advertise anew and relet the contract in the manner hereinbefore provided.

4430. Each contractor under the provisions of this act shall furnish the proper officer with **proof sheets** in page form of any work required to be done under his contract, and immediately upon the completion thereof shall deliver the same without expense to the secretary of state, who shall deliver the work to the officer entitled thereto.

4431. It shall be the duty of the **attorney general** to **draw** all **contracts** let under the provisions of this act, and each contract shall be signed by the members of the said board and the party to whom such contract has been awarded; and said contract and the bonds as hereinbefore provided for shall be filed in the office of secretary of state. In case of the non-performance of any contract by the contractor, whereby the state is damaged, and in case any successful bidder shall fail to enter into bond as heretofore provided, it shall be the duty of the attorney general, when so directed by the board, to bring suit upon the proper bond and contract for the recovery of any damage that the state may have sustained by reason thereof.

4432. Upon the completion of each **contract** or any particular job of work required under any of the provisions of this act, **payment** therefor shall be made to the proper contractor at the contract price upon vouchers certified to as "correct" by the printing board, in the same manner that other accounts against the state are paid, out of any funds appropriated for that purpose by the legislature.

4433. The **contractor** for the printing of bills or any matter printed in bill form shall promptly, and without unnecessary delay, execute all orders of the legislature, or either house thereof, for such printing, and for each **failure to complete** said printing within three days after receiving the order for the same the contractor shall **forfeit** and pay a penalty of twenty-five dollars, to be deducted from his account on settlement; and all contractors under the provisions of this act shall without unnecessary delay execute all orders issued to them by the printing board, and the contractor for printing and binding the laws shall deliver the same to the secretary of state within sixty days after the adjournment of each session of the legislature, and the contractor for printing and binding of the journals shall deliver the same to the secretary of state within ninety days after receiving the copy thereof.

4434. The secretary of state shall furnish a true and accurate **copy** of the laws and journals as they may be demanded by the printer thereof, and the clerks of the respective branches of the legislature shall each furnish to the printer, who is bound by his contract to print the same, copies of the journals, bills, reports, and other papers and documents, without unnecessary delay, and no contractor shall be accountable for any delay occasioned by the want of such copy.

4435. It shall be the duty of the **secretary of state** to classify and **arrange** for publication the **laws,** joint resolutions, and memorials passed at each session, and to make out a full index and marginal notes to the laws as fast as shall be necessary. The signatures of the speaker of the house, president of the senate, and governor shall not be printed at the end of each law and chapter, but only at the end of the volume. The date of approval by the governor shall be affixed to each law, and there shall be prefixed to each volume of laws published the name and residence of the several state officers, the senators and members of the house of representatives, and the presiding officers and clerks of both branches of the legislature at the time of passing such laws.

4436. The foregoing provisions of this **act** shall **not apply** to the printing of work required during the session of the legislature other than bills, but any such printing shall be done under the supervision of the committee on printing of either house in such manner and on such terms as they may deem best. The account therefor to be paid out of any money appropriated for the incidental expenses of the legislature.

Secs. 4437 to 4440. "An act to provide for preparing and publishing a full statement of moneys expended at each session of the legislature." 1877, p. 157. In force June 1.

4437. The auditing board for **state printing,** consisting of the secretary of state, auditor of public accounts, and state treasurer, shall within thirty days after the adjournment of each session of the legislature receive **proposals** from the daily newspapers of the state **for** one publication in said paper of a statement to be prepared by the auditor of public accounts as hereinafter provided.

4438. The said board of audit shall **award** the **contract** to one of the three daily papers having the largest daily circulation in the state, the same to be ascertained by the affidavit of the publishers thereof, and from such other reliable information as said board may be able to obtain.

4439. After said award has been made as aforesaid the auditor of public accounts shall prepare, or cause to be prepared, a certified **statement of** all **appropriations** whatever made by the last session of the legislature, and also a full statement of the expenses of said legislative session, specifying the amount of each item and to whom and for what paid.

4440. The **expenses** incurred by virtue of the provisions of this act shall be audited and paid in the manner now provided by law for the payment of other state printing.

Sec. 4441. "An act providing for the **printing of biennial reports** of certain state officers." 1875, p. 165. In force February 25. (Sec. 1 superseded by sec. 1, act 1881, p. 90; sec. 3 temporary and omitted.)

4441. The state printer receiving the copy for printing said **biennial reports** during or any time before the contract shall have expired shall furnish and complete the order given under his contract, and the same shall be audited and paid for as provided by law.

CHAPTER 52.—TRUSTS.

Secs. 4442 to 4449. "An act to prohibit persons, partnerships, companies, associations, or corporations engaged as manufacturers or dealers from entering into any understanding, contract, combination, pool, or trust for any purpose whatever, and to provide punishment for violations of the same, and providing means for the suppression of such evils and remedies for persons injured thereby." 1889, p. 516. In force June 30.

4442. [**Combinations in restraint of trade.**]—It shall be unlawful for any person or persons, partnership, company, association, or corporation organized for any purpose whatever or engaged in the manufacture or sale of any article of commerce or consumption, or for any such person or persons, partnership, company, association, or corporation dealing in any natural product to enter into any contract, agreement, or combination with any other person or persons, partnership, company, association, or corporation organized and doing business in this state, or in any other state or territory and doing business in this state, engaged in the manufacturing, selling, or dealing in the same, or any like manufactured or natural product whereby a common price shall be fixed for any such article or product, or whereby the manufacture or sale thereof shall be limited or the amount, extent, or number of such product to be sold or manufactured shall be determined, or whereby any one or more of the combining or contracting parties shall suspend or cease the sale or manufacture of such products, or whereby the products or profits of such manufacture or sale shall be made a common fund to be divided among the respective persons, partnerships, companies, association, or corporation so entering into such contract, agreement, or combination.

See **29**, 701 (46 N. W., 155).

4443. **Pooling**, between persons, partnerships, companies, associations or corporations, engaged in the same or like business for any purpose whatever, and the formation of combinations or common understanding between two or more persons, companies, partnerships, associations, or corporations, in the nature of what are commonly called trusts, for any purpose whatever, or the continuance of the same after the taking effect of this act, are hereby **prohibited** and declared to be unlawful, and each day of the continuance of any such pool or trusts shall constitute a separate offense.

4444. That in any case **any person**, persons, company, partnership, association, or corporation shall **do**, cause to be done, or permit to be done, any act, matter, or thing in this **act prohibited** or declared to be unlawful, such person, persons, partnership, company, or corporation shall be **liable** to the person, persons, partnership, company, association, or corporation injured thereby, for the full amount of **damages** sustained in consequence of any such violations of the provisions of this act, together with a reasonable counsel or **attorney fee** to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case, and the property of any person who may be a member or interested in any partnership, association, company, or corporation violating the provisions of this act shall be liable for the full amount of such judgment and may be levied upon and sold to satisfy the same.

4445. Any association of **persons** doing business in this state in a firm, partnership, or corporate name, and not incorporated under the laws of the state who shall **violate** the provisions of this **act**, in addition to the other penalties and liabilities herein provided, shall **forfeit** its right to do business in such firm, partnership, or corporate name; and if any such person shall thereafter continue to do business in such firm, partnership, or corporate name, they shall incur the penalties provided in section three (3) of the act entitled "An act providing for the recording the names of all members of associations doing business under a firm, partnership, or corparate name."

See sec. 3230, ch. 40.

4446. Any corporation violating any of the provisions of this act, in addition to the other penalties and liabilities herein provided, shall surrender and forfeit its right and privileges as a corporation, and it shall be the duty of the prosecuting attorney of the proper county to institute proceedings against said corporation or the persons constituting the same for the purpose of having the same dissolved, and the same proceedings shall be and the same judgment may be rendered as is provided in title 23, entitled "Information," of the Code of Civil Procedure.

4447. Any person, partnership, company, association, or corporation subject to the provisions of this act, or any director, officer, receiver, trustee, clerk, lessee, agent, or person acting for or employed by them or either of them who shall violate any of the provisions of section one (1) or two (2) of this act shall be declared guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars ($1,000) or imprisoned in the jail of the county for a period not exceeding six months, or both, in the discretion of the court.

4448. In any action brought under any of the provisions of this act the court before whom the same shall be pending may compel any person, or persons, partnership, company, association, or corporation so proceeded against, or any of the members of any such partnership or corporation, or any director, officer, receiver, trustee, agent, employee, or clerk of them, or either of them, to attend, appear, and testify in such suit or proceeding, and may compel the production of the books and papers of any such person, persons, partnership, company, association, or corporation party to any such proceeding.

4449. Nothing herein contained shall prevent any assemblies or associations of laboring men from passing and adopting such regulations as they may think proper, in reference to wages and the compensation of labor, and such assemblies and associations shall retain—and there is hereby reserved to them—all the rights and privileges now accorded to them by law, anything herein contained to the contrary notwithstanding.

CHAPTER 53.—VETERANS.

Secs. 4450 to 4452. "An act to provide for the **publication** of the **names** of all ex-soldiers, sailors, and marines residing in Nebraska." 1887, p. 620. In force March 4.

4450. The **assessor** of each precinct, township, or ward shall **make** and deliver to the county clerk of their respective counties, at the time of making their annual assessment in the year 1887, and every two years thereafter, a **corrected list** of all persons who served in the United States army, navy, and marine corps during the war of 1812, the Mexican war, and the war of the rebellion, designating the rank, company, regiment, battery, or vessel in which they served, and their present residence and postoffice address, which several lists shall be returned with the assessor's books to the county clerk, who shall, on or before the first day of June, 1887, certify to the secretary of state a true copy of said lists, alphabetically arranged by regiments and states, the secretary of state to furnish each county clerk with sufficient blanks for this purpose.

4451. The secretary of state, on receipt of said lists from the county clerks, shall proceed to consolidate said lists alphabetically by regiments and states, and **publish** two thousand copies in book form as a **roster** of the ex-soldiers, sailors, and marines now residents of Nebraska, three copies of which shall be furnished each post of the Grand Army of the Republic in the state of Nebraska, one hundred copies to the state library for exchange with other libraries, fifty copies to the commissioner of pensions, the remaining books to be retained by the secretary of state for **distribution.**

4452. All **expenses** attending the publication of the foregoing roster shall be **paid** from the fund for printing laws, journals, and such other printing as is required under contract.

Sec. 4453. "An act to **prevent persons** from **unlawfully using** or wearing the **badge of** the **Grand Army** of the Republic." 1887, p. 670. In force March 31.

4453. **Any person** who shall **willfully wear** the **badge of** the Grand Army of the Republic, or who shall use or wear the same to obtain aid or assistance thereby within this state, unless he shall be entitled to wear or use the same under the rules and regulations of the department of Nebraska, Grand Army of the Republic, shall be guilty of a misdemeanor, and upon conviction shall be **punished** by imprisonment for a term not to exceed thirty (30) days in the county jail, or a fine not to exceed twenty (20) dollars, or by both such fine or imprisonment.

Sec. 4454. "An act to **prevent persons** from **unlawfully using** or wearing the **insignia** or rosette of the Military Order of the **Loyal Legion** of the United States." 1889, p. 578. In force June 30.

4454. **Any person** who shall **willfully wear** the **insignia** or rosette of the Military Order of the Loyal Legion of the United States, or use the same to obtain aid or assistance within this state, unless he shall be entitled to use or wear the same under the constitution and by-laws, rules, and regulations of the Military Order of the Loyal Legion of the United States, shall be guilty of a misdemeanor, and upon conviction shall be **punished** by imprisonment in the county jail for a term not exceeding thirty days, or a fine not to exceed twenty (20) dollars, or by such fine or imprisonment.

Secs. 4455 to 4458. "An act to provide for the **relief of Union soldiers, sailors, and marines,** and the indigent wives, widows, and minor children of indigent or deceased Union soldiers, sailors, and marines." 1889, p. 528. In force June 30.

4455. That the county board of the several counties of this state are hereby authorized to levy, in addition to the taxes now levied by law, a **tax** not exceeding three-tenths of one mill upon the taxable property of their respective counties, to be **levied** and collected as now provided by law for the assessment and collection of taxes, **for** the purpose of creating a **fund** for the relief and for funeral expenses of honorably discharged indigent Union soldiers, sailors, and marines, and the indigent wives, widows, and minor children not over 14 years of age in the case of boys, and not over 16 years of age in the case of girls, of such indigent or deceased Union soldiers, sailors, and marines, having a legal residence in said county, to be disbursed as hereinafter provided.

4456. The county board in each county of this state shall, on second Tuesday in January, 1890, appoint three persons who are residents of such county, at least two of whom shall be honorably discharged Union soldiers, one to serve three years, one to serve two years, and one to serve one year from date of appointment, and and each year thereafter one person to serve for three years, such persons so appointed, when organized by the selection of one of their number as chairman and one as secretary, shall be designated and known as "**The Soldiers' Relief Commission.**" The members of said commission shall qualify by taking the usual oath of office and shall each give bonds in the sum of five hundred dollars ($500) for faithful performance of their duties. In the event of a vacancy in said commission occurring from any cause, the county board shall fill the vacancy for the unexpired term.

4457. [**Duties.**]—The Soldiers' Relief Commission shall meet at the clerk's office on the second Monday in February of each year, and at such other times as is deemed necessary, and shall examine and determine who are entitled to relief under the provisions of this act and shall make lists of such persons, and at the February meeting such commission, after determining the probable amount necessary for the purpose provided herein, shall certify the amount to the county board, and the county board of each county at its regular meeting in June of each year shall make such levies as shall be necessary to raise the required relief fund, not exceeding three-tenths of a mill on the taxable property of such county. The Soldiers' Relief Commission shall fix the amount to be paid in each case, the aggregate not to exceed the levy of said tax for any one year, and shall certify the lists to the county clerk. The clerks shall, within twenty days thereafter, transmit to the justices of the peace in his county a list of the names of the persons in the respective townships or precincts to whom relief has been awarded and the amount thereof. The county clerk, on the first Monday of each month after said fund is ready for distribution, shall issue his warrant to the Soldiers' Relief Commission, upon the county treasurer, for the several amounts awarded. Such commission shall disburse the same to the person or persons named in the lists, taking receipts therefor; or such fund may be disbursed in any other manner directed by the commission; *Provided, however,* That when said commission is satisfied that any person entitled to relief under this act will not properly expend the amount allowed, the commission may pay the amount to some suitable person, who shall expend the same for such person in such manner as the commission may direct; *And provided further,* That said commission at any meeting may decrease, increase or discontinue any amount before awarded, and may add new names to the lists, which shall be certified to the county clerk. The Soldiers' Relief Commission shall, at the end of each year, make to the county board a detailed report of the transactions of such commission; such reports shall be accompanied with vouchers for all moneys disbursed.

4458. The county board may at any time **remove** any **member of** the **commission** for neglect of duty or maladministration and appoint others in the place of members thus removed.

Secs. 4459 to 4461. "An act to provide for the **burial of honorably discharged soldiers,** sailors, or marines who may hereafter die without leaving means sufficient to defray expenses, and to provide head-stones to mark their graves." 1885, p. 214. In force June 5.

4459. It shall be the **duty of** the **board** of county commissioners or board of supervisors in counties under township organization of this state to designate some suitable person in each precinct or township, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor, or marine who served in the army or navy of the United States during the late war, who may hereafter die without leaving sufficient means to defray funeral expenses. Such burial should not be made in any cemetery or burial ground used exclusively for the burial of the pauper dead; *Provided,* The expenses of such burial shall not exceed the sum of thirty-five dollars; *And provided further,* That in case that surviving relatives of the deceased shall desire to conduct the funeral, and are unable to pay the charges therefor, they shall be permitted so to do, and the expenses shall be paid as herein provided.

4460. The **grave** of any such deceased soldier, sailor, or marine shall be marked by a **head-stone,** containing the name of the deceased, and the organization to which he belonged or in which he served; *Provided,* It shall be the duty of the county commissioners or supervisors in counties under township organization, upon the death and burial of any such soldier, sailor, or marine residing within such county at the time of his death, to make application to the proper authorities under the general government for a suitable head-stone as provided by act of congress, and cause the same to be placed at the head of such deceased soldier's grave.

4461. The **expenses** of such burial shall be paid by the county in which such soldier, sailor, or marine shall have died. And the board of county commissioners or supervisors of such county are hereby authorized and directed to audit the account and pay the said expenses in similar manner as other accounts against such county are audited and paid.

CHAPTER 54.—WAREHOUSES.

Secs. 4462 to 4473 formed ch. 54, R. S. 1866, p. 389, entitled "Warehousemen."

4462. Whenever any personal **property** shall be **consigned** to, or deposited with, any forwarding merchant, wharf keeper, warehouse keeper, tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, and other personal property, such consignee or bailee shall immediately cause to be entered in a book, to be provided and kept by him for that purpose, a **description** of such property, with the date of the reception thereof.

4463. If such property shall not have been left with such **consignee** or bailee for the purpose of being forwarded or otherwise disposed of, according to directions received by such consignee or bailee, at or before the time of the reception thereof, and the name and residence of the owner of such property be known or ascertained, the person having such property in his custody shall immediately **notify** such **owner,** by letter to be directed to him and deposited in a postoffice to be transmitted by mail, of the reception of such property.

4464. In case any such **property** shall remain **unclaimed** for three months after its reception as aforesaid, the person having possession thereof shall cause a **notice** to be published, once in each week for four successive weeks, in a newspaper published in the same county, if there be one, and if not, then in some paper published at the seat of government, describing such property, and specifying the time when it was so received, and stating that unless such property shall be claimed within three months from the first publication of such notice, and the lawful charges thereon paid, the same will be sold according to the statute in such case made and provided.

4465. **In case** the **owner** or person entitled to such property **shall not,** within three months **after** the publication of such **notice, claim** such **property** and pay the lawful charges thereon, including the expenses of such publication, the person having possession of the property, his agent or attorney, may make and deliver to any justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property is known or unknown.

4466. Upon the delivery to him of such affidavit, the **justice** shall **cause** such property **to be opened** and examined in his presence, and a true inventory thereof to be made, and shall make and annex to such inventory an order under his hand that the property therein described be sold by the sheriff of the county where the same shall be, at public auction, upon due notice.

4467. It shall be the duty of the **sheriff** receiving such inventory and order to give ten days' notice of the sale by posting up written notices thereof in three public places in the county or city, and **to sell** such property at public auction for the highest price he can obtain therefor.

4468. Upon completing the sale, the sheriff making the same shall endorse upon the order aforesaid a **return** of his proceedings upon such order, and the proceeds of the sale after deducting his fees, which shall be the same as upon an execution.

4469. From the **proceeds of** such **sale** the justice shall pay the charges and expenses legally incurred in respect to such property, or a ratable proportion to each claimant if there be not sufficient to pay the whole; and such justice shall ascertain and determine the amount of such charges in a summary manner, and shall be entitled to three dollars for each day's services rendered by him in such proceeding.

4470. Such **justice** shall deliver to the treasurer of the county in which the property was sold, the affidavit, inventory, and order of sale and return hereinbefore mentioned, together with a **statement** of the charges and expenses incurred in respect to such property as ascertained and paid by him, with a statement of his own fees, and shall at the same time pay over to such treasurer any balance of the proceeds of the sale remaining after payment of such charges, expenses, and fees.

4471. The **treasurer** shall **file** in his office and safely keep all the **papers** so delivered to him, and make a proper entry of the payment to him of any moneys arising from such sale, in the books of his office.

4472. If the **owner** of the property sold, or his legal representatives, shall, at any time, within five years after such money shall have been deposited in the county treasury, **furnish** satisfactory **evidence of** the **ownership** of such property, he or they shall be entitled to receive from such treasurer the amount deposited with him.

4473. If the **amount** so **deposited** with any county treasurer shall not be paid to such owner, or his legal representatives, within the said five years, such county treasurer shall pay such amount into the **school fund** of the proper county to be appropriated for the support of schools.

Secs. 4474 and 4475. "An act to provide and regulate the **liens of warehouse receipts** under certain circumstances." 1879, p. 73. In force February 27.

4474. Any packer of pork or beef, or any manufacturer of distilled spirits or of linseed oil, having a warehouse for the storage of his own products; and any keeper of an elevator, warehouse, crib, or tanks wherein he stores his own grain, flaxseed, or linseed oil, may issue receipts for his own meats, spirits, grain, flaxseed, or linseed oil which he actually has so stored, in the usual form of **warehouse receipts,** which shall have the same force and effect as the receipts issued by the keeper of a public warehouse, to parties having property so stored therein, which receipts shall be **negotiable** by endorsement, and entitle the *bona fide* holder thereof advancing money on the credit of the same to a lien upon the property so stored and described therein, for the money so advanced, as to all subsequent purchasers and creditors of any person interested therein from the issue of such receipts and the advance of such money.

Amended 1887, p. 640; 1889, p. 405. An order drawn upon and accepted by a warehouseman is equivalent to a warehouse receipt. 3, 235.

4475. If any person described in the preceding section shall execute and deliver, or cause to be executed and delivered, to any other person, false, **fraudulent** or fictitious **warehouse receipts** acknowledgments, or other instrument in writing to the effect that he had in store in his warehouse, elevator, or crib, meats, spirits, or grain, whereas in fact he had not the same so stored, according to the purport or effect of said receipt, acknowledgment, or writing; or having issued his receipt thereon as in the proceeding section provided, shall sell, or incumber, ship, transfer, or in any manner remove beyond his immediate control, the property described in such receipt, without first having discharged the lien in said section provided, or without the written consent of the holder of such receipt, with the intent to deceive, or defraud, or injure any person whomsoever, or if any person shall endorse, assign, transfer, or deliver to any other person any such false or fraudulent receipt, acknowledgment, or instrument in writing, knowing the same to be false, fraudulent, or fictitious, with like intent, such person shall be judged guilty of a misdemeanor, and on conviction thereof shall be punished by **fine** not exceeding one thousand dollars ($1,000) and imprisonment in the penitentiary of this state not exceeding three years.

Amended 1887, p. 641.

Secs. 4476 to 4529. "An act to create and regulate public warehouses, and the warehousing, shipping, weighing, and inspection of grain." 1891, p. 363. In force Aug. 1. See preface.

4476. **[What are.]**—That all elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

4477. The **owner,** lessee, or manager of each and every public warehouse shall make **weekly statements** under oath, on or before each Tuesday up to the close of business of the of the* previous Saturday, before some officer designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such other place or places designated by law, which statement shall correctly set forth the amount of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of taking such statement, outstanding therefor; and in cities of the metropolitan or first class, the owner, lessee, or manager of each public warehouse situated therein shall, in addition to the above, note such daily changes on the copy posted in the warehouse as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior lots without the consent of the owner or consignee thereof.

4478. The **owner** or owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at **liberty to examine** such property stored and all the books and records of the warehouse in regard to such property.

4479. **Classified.**—All public warehouses as herein defined shall be divided into three classes, to be designated A, B, and C respectively, and they shall receive, ship, store, and handle the property of all alike without discrimination. This does not apply to property extra hazardous.

4480. **Classes defined.**—Public warehouses of Class A shall embrace all warehouses, elevators, and granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators, or granaries being located in the cities of the metropolitan or first class. Public warehouses of Class B shall embrace all other warehouses, elevators, or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. Public warehouses of Class C shall embrace all other warehouses or places where property of any kind is stored for a consideration.

4481. **License.**—The proprietor, lessee, or manager of any public warehouse shall be required, before transacting any business in such warehouse, to procure from the board of transportation a license permitting such proprietor, lessee, or manager to transact business as a public warehouseman under the law of this state, which license shall be issued by the board of transportation upon a written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the name of the president, secretary, and treasurer of such corporation shall be stated, and the said license shall give authority to carry on and conduct the business of a public warehouse in accordance with the laws of this state and shall be revocable by the said board of transportation upon complaint of any person in writing, setting forth the particular violation of law, and upon satisfactory proof, to be taken in such manner as may be directed by the said board of transportation.

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*So in original.

4482. **Bond.**—The person receiving a license as herein provided shall file with the said board of transportation a bond to the people of the state of Nebraska, with good and sufficient security, to be approved by said board of transportation, in the penal sum of ten thousand dollars ($10,000), conditioned for the faithful performance of his duty as public warehouseman, and his full and unreserved compliance with all laws of this state in relation thereto.

4483. **Penalty for doing business without a license.**—Any person who shall transact the business of a public warehouse without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall on conviction be fined in a sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each and every day such business is carried on, and the said board of transportation may refuse to renew any license or to grant a new one to any of the persons whose license has been revoked within one year from the time it was revoked.

4484. **Not to discriminate—Not to mix grain receipts.**—It shall be the duty of any warehouseman of Classes A and B to receive for storage or shipment any grain that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons desiring to avail themselves of warehouse facilities, and in the case of every warehouseman of Class A such grain in all cases shall be inspected and guarded by a duly authorized inspector, and stored with grain of a similar grade received at the same time as near as may be. In no case shall grain of different grades be mixed together in warehouses of Class A while in store, but if the owner or consignee so requests and the warehousemen consent thereto, his grain of the same grade may be kept in a bin by itself apart from that of the owners, which bin shall thereupon be marked and known as a "separate bin." If a warehouse receipt be issued for grain so kept separate, it shall state on its face that it is in a separate bin, and shall state the number of such bin, and no grain shall be delivered from such warehouse of Class A unless it be inspected on the delivery thereof by a duly authorized inspector of grain. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouses are necessarily closed.

4485. **Manner of issuing receipts, Class A.**—Upon application of the owner or consignee of grain stored in a public warehouse of Class A, the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehousemen shall issue to the person entitled thereto a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grade mentioned in it has been received into store, to be stored with grain of the same grade by inspection, received at about the date of the receipt, and that it is delivered upon the return of the receipt, properly endorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain issued from the same warehouse shall be consecutively numbered, and no two receipts bearing the same number shall be issued from the same warehouse during any one year except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars the number of each car shall be stated upon the receipt, with the amount it contained; if from canal boat, barge, or other vessel, the name and number of such craft; if from teams or by other means the manner of its receipt shall be stated on its face. The number of the bin shall also be written on the face of the receipt when desired by the owner or consignee.

4486. **Canceling receipts.**—Upon the delivery of grain or other property from store, upon any receipt, such receipt shall be plainly marked across its face with the word "Canceled," with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain or other property be delivered twice upon the same receipt.

4487. **Further of issuing and canceling receipts.**—No warehouse receipt shall be issued except upon the actual delivery of grain or other property into store in the warehouse from which it purports to be issued and which is to be represented by the receipt, nor shall any receipt be issued for a greater quantity of grain or other property than was contained in the lot or parcel stated to have been received, nor shall more than one receipt be issued for the same lot of grain or other property except in cases where receipt for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain or other property represented by the receipt is delivered out of store and the remainder is left, a new receipt may be issued for such remainder, but such new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number, and the receipt upon which a part has been delivered shall be canceled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consent thereto, the original receipt shall be canceled the same as if the grain or other property had been delivered from store, and the new receipts shall express on their face that they are parts of other receipts or a consolidation of other receipts, as the case may be, and the number of the original receipts shall also appear upon the new ones issued as explanatory of the change, but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones canceled, as herein provided, shall bear the same dates as those originally issued as near as may be.

4488. **Not to limit liability.**—No warehouseman in this state shall insert in any receipt issued by him any language in anywise limiting or modifying his liabilities or responsibilities as imposed by the laws of this state.

4489. **Delivery of property.**—On the return of any warehouse receipt issued by him, properly endorsed, and the tender of all proper charges upon the property represented by it, such property shall be deliverable to the holder of such receipt in the order demanded and as rapidly as due diligence, care, and prudence will justify. Unless the property represented by such receipt shall be promptly delivered as above, after such demand shall have been made, the warehouseman in default shall be liable to the owner of such receipt for damages for such default ten per cent of the value of the property at the time of the demand, and in addition thereto one per cent of the value of the property for each and every day of such neglect or refusal to deliver.

4490. **Posting grain in store, statements to registrar, daily publications, canceled receipts, Class A.**—The warehouseman of every public warehouse of Class A shall on or before Tuesday morning of each week cause to be made out and shall keep posted in the business of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday, and shall also on each Tuesday morning render a similar statement made under oath before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof, or by the book-keeper thereof having personal knowledge of the facts, to the warehouse registrar appointed as hereinafter provided. They shall also be required to furnish daily to the same registrar a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day; also the amount of each kind and grade of grain delivered or shipped by such warehousemen during the previous day, and what warehouse receipts have been canceled upon which the grain has been delivered on such day, giving the number of each receipt and amount, kind, and grade of grain received and shipped upon each; also how much grain, if any, was so delivered or shipped, and the kind and grade of it, for which warehouse receipts had not been issued, and when and how much unreceipted grain was received by them, the aggregate of such reported cancellations and delivery of unreceipted grain corresponding in amount, kind, and grade with the amount so reported, delivered, or shipped. They shall also at the same time report what receipts, if any, have been canceled and new ones issued in their stead, as herein provided for. And the warehouseman making such statements shall, in addition, furnish the said registrar any further information regarding receipts issued or canceled that may be necessary to enable him to keep a full and correct record of all receipts issued and canceled, and of grain received and delivered.

4491. **Chief inspector.**—It shall be the duty of the governor to appoint, by and with the advice and consent of the senate, a suitable person, who shall not be a member of any board of trade, and who shall not be interested directly or indirectly in any warehouse in this state, a chief inspector of grain, who shall hold his office for the term of two years, unless sooner removed as hereinafter provided for, in every city or county in which is located a warehouse of Class A or B; *Provided,* That no such grain inspector for cities or counties in which are located warehouses of Class B shall be appointed, except upon the application and petition of two or more warehousemen of Class B doing business in such city or county; and when there shall be a legally organized board of trade in such cities or counties such application and petition shall be officially endorsed by such board of trade before such application and petition shall be granted.

II. **His duties.**—It shall be the duty of such chief inspector of grain to have a general supervision of the inspection of grain as required by this act or laws of this state, under the advice and immediate direction of the board of transportation.

III. **Assistant inspectors.**—The said chief inspector shall be authorized to nominate to the said board of transportation such suitable persons in sufficient number as may be deemed qualified for assistant inspectors, who shall not be members of any board of trade nor interested in any warehouse, and also such other employees as may be necessary to properly conduct the business of his office, and the said board of transportation is authorized to make such appointments.

IV. **Chief inspector's oath and bond.**—The chief inspector shall, upon entering the duties of his office, be required to take an oath, as in case of other officers, and he shall execute a bond to the people of the state of Nebraska in the penal sum of fifty thousand dollars ($50,000), when appointed for any city in which is located a warehouse of Class A, and ten thousand dollars ($10,000), when appointed for any other city or county, with sureties to be approved by the board of transportation, with a condition therein that he will faithfully and strictly discharge the duties of his said office of inspector according to law and the rules and regulations prescribing his duties, and that he will pay all damages to any person or persons who may be injured by his neglect, refusal, or failure to comply with law and the rules and regulations aforesaid.

V. **Assistant inspector's oath and bond.**—And each assistant inspector shall take a like oath, execute a bond in the penal sum of five thousand dollars ($5,000), with like conditions, and to be approved in like manner as is provided in case of the chief inspector, which said several bonds shall be filed in the office of said board of transportation, and suit may be brought upon said bond or bonds in any court having jurisdiction thereof, in the county where the plaintiff or defendant resides, for the use of the person or persons injured.

VI. **Rules for inspection charges.**—The chief inspector of grain and all assistant inspectors of grain and other employees in connection therewith shall be governed in their respective duties by such rules and regulations as may be prescribed by said board of transportation, and the said board of transportation shall have full power to make all rules and regulations for the inspection of grain, and shall also have power to fix the rate of charges for the inspection of grain, and the manner in which the same shall be collected, which charges shall be collected, which charges shall be regulated in such a manner as will in the judgment of the said board of transportation produce sufficient revenue to meet the necessary expenses of the service of inspection and no more.

VII. **Pay of inspector and assistants.**—It shall be the duty of the said board of transportation to fix the amount of compensation to be paid to the chief inspector, assistant inspectors, and all other persons employed in the inspection service, and prescribe the time and manner of their payment.

VIII. **Appointment of registrar and assistants.**—The said board of transportation are hereby authorized to appoint a suitable person as warehouse registrar and such assistants as may be deemed necessary to perform the duties imposed upon such registrar by the provisions of this act.

IX. **General supervision, pay, etc.**—The said board of transportation shall have and exercise a general supervision and control of such appointments, shall prescribe their respective duties, shall fix the amount of their compensation and the time and manner of its payment.

X. **Removal from office.**—Upon the complaint in writing of any person to the said board of transportation, supported by reasonable and satisfactory proof, that any person appointed or employed under the provisions of this section has violated any of the rules prescribed for his government, has been guilty of an improper act, or has been found insufficient* or incompetent for the duties of his position, such person shall be immediately removed from his office or employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment, or in case it shall be deemed necessary to reduce the number of persons so appointed or employed, their term of service shall cease under the orders of the same authority by which they were appointed or employed.

XI. **Expenses, how paid.**—All necessary expenses incident to the inspection of grain and to the office of registrar economically administered, including the rent of suitable offices, shall be deemed expenses of the inspection service, and shall be included in the estimate of expenses of such inspection service, and shall be paid from the funds collected for the same.

4492. **Rates of storage.**—Every warehouseman of public warehouses of Class A shall be required during the first week in January of each year to publish in one or more of the newspapers, daily, if there be such published in the city in which [such] warehouse is situated, a table or schedule of rates for the storage of grains in his warehouse during the ensuing year, which shall not be increased, except as is hereinafter provided during the year, and such published rates, or any published reduction of them, shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly for or against any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be for the first ten days or part thereof.

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*So in original.

4493. **Weighing.**—All grain shall be weighed on receipt and delivery from the public warehouse of Classes A and B, and annually on the date prescribed by the board of transportion all grain in bulk stored in said public warehouses shall be weighed according to its kind and grade and reported to the registrar.

4494. **Loss by fire—Heating—Order of delivery—Grain out of condition.**—No public warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same, nor shall he be held liable for damage to grain by heating if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control, and in order that no injustice may result to the holder of grain in any public warehouse of Classes A and B, it shall be deemed the duty of such warehouseman to dispose of by delivery or shipping in the ordinary and legal manner of so delivering that grain of any particular grade which was first received by them or which has been the longest time in store in his warehouse, and unless public notice has been given that some portion of the grain in his warehouse is out of condition or becoming so, such warehouseman shall deliver grain of quality equal to that received by him on all receipts as presented. In case, however, any warehouseman of Classes A and B shall discover that any portion of the grain in his warehouse is out of condition or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice by advertisement in a daily newspaper in which [such] warehouse is situated, and by posting a notice in the most public place for such a purpose in such city, of its actual condition as near as he can ascertain it, shall state in such notice the kind and grade of the grain and the bins in which it is stored, and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts, and dates of each, which receipts shall be those of the oldest dates then in circulation or uncanceled, the grain represented by which has not previously been declared or receipted for as out of condition, or if the grain longest in store has not been receipted for he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received and the amount of it, and the enumeration of receipts and identification of grain so discredited shall embrace, as near as may be, as great a quantity of grain as is contained in such bins, and such grain shall be delivered upon the return and cancellation of the receipts and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after publication of its condition, but such grain shall be kept separate and apart from all direct contact with other grains, and shall not be mixed with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto the license of such warehouseman shall be revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin or by itself, as provided in this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall not be removed from store by the owner thereof within one month from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction for the account of said owner by giving ten days' notice by advertisement in a daily newspaper, if there be such published in the city or town where such warehouse is located.

4495. **Tampering with grain stored—Private business—Drying—Cleaning—Moving.**—It shall not be lawful for any public warehouseman to mix any grain of different grades together or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person, and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain, but in such case it shall only be delivered as such separate lot or as the grade it was originally when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for its preservation or safe keeping.

4496. **Examination of grain and scales—Incorrect scales.**—All persons owning property or who may be interested in the same in any public warehouse, and all duly authorized inspectors of such property, shall at all times during ordinary business hours be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agent, and his servants for an examination, and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property; and all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector or sealer of weights and measures at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed on such scales, the expense of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided.

4497. **Grain must be inspected.**—In all places where there is* legally appointed inspectors of grain no proprietor or manager of a public warehouse of Classes A and B shall be permitted to receive any grain and mix the same with the grain of other owners in the storage thereof until the same shall have been inspected and graded by said inspector.

4498. Any **person** who shall **assume to act** as an inspector of grain, who has not been legally appointed and sworn, shall be held to be an impostor and shall be punished by a **fine** of not less than one hundred dollars ($100) nor more than two hundred dollars ($200) for each and every attempt to so inspect grain, to be recovered before a justice of the peace.

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* So in original.

4499. **Misconduct of inspector—Influencing.**—Any duly authorized inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty as such inspector of grain, and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), in the discretion of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court.

4500. **Owner, etc., dissatisfied with inspection—His rights.**—In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall from any cause desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have been previously consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice, and such grain shall be withheld from going into store and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice. The grain, if in railroad cars, to be removed therefrom by such owner or .consignee within twenty-four hours after such notice has been given to the railroad company having it in possession, provided such railroad company place same in a proper and convenient place for unloading, and any person or corporation refusing to allow such owner or consignee to so receive his grain or other property in car loads shall be deemed guilty of conversion and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain or other property is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if after such notice it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner for double its market value.

4501. **Combination.**—It shall be unlawful for any proprietor, lessee, or manager of any public warehouse to enter into any contract, agreement, understanding, or combination with any railroad company or other corporation, or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose contrary to the direction of the owner, his agent or consignee. Any violation of this section shall subject the offender to be proceeded against as provided in the next section of this act.

4502. **Suits.**—If any warehouseman shall be deemed guilty of a violation of any of the provisions of this act it shall be lawful for any person injured by such violation to bring suit in any court of competent jurisdiction upon the bond of such warehouseman, in the name of the people of the state of Nebraska, to the use of such person. In all criminal prosecutions against a warehouseman for the violation of any of the provisions of this act it shall be the duty of the prosecuting attorney of the county in which said prosecution is brought to prosecute the same to a final issue, in the name of and on behalf of the people of the state of Nebraska.

4503. **Warehouse receipts negotiable.**—Warehouse receipts for property stored in any class of public warehouses as herein described shall be transferable by the endorsement of the party to whose order such receipt may be issued, and such endorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. All warehouse receipts for property stored in public warehouses of Class C shall distinctly state on their face the brand or distinguishing marks upon such property.

4504. **False receipts—Fraudulent removal.**—Any warehouseman of any public warehouse who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality, or inspected grade of such property, or who shall remove any property from store except to preserve it from fire or other sudden danger, without the return and cancellation of any and all outstanding recipts that may have been issued to represent such property, shall, when convicted thereof, be deemed guilty of a crime, and shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one and not more than ten years.

4505. **Common law remedy saved.**—Nothing in this act shall deprive any person of any common law remedy now existing.

4506. **Printed copy of act posted.**—All proprietors and managers of public warehouses shall keep posted up at all times in a conspicuous place in their business offices and in each of their warehouses a printed copy of this act.

4507. **Duty of board of transportation.**—It shall be the duty of the board of transportation to see that the provisions of this act are duly enforced.

DEFINING ADDITIONAL DUTIES OF THE BOARD OF TRANSPORTATION IN COUNTIES WITH PUBLIC WAREHOUSES.

4508. **Additional duties of the board of transportatin.**—In addition to their present duties the board of transportation shall examine into the condition and management and all other matters concerning the business of public warehouses in this state, so far as the same pertain to the relation of such warehouses to the public and to the accommodation and security of persons doing business therewith, and whether such warehouses, their officers, directors, managers, lessees, agents, and employees comply with the laws of this state now in force, or which shall hereafter be in force concerning them. And whenever it shall come to their knowledge, either upon complaint or otherwise, or they shall have reason to believe that any such law or laws have been or are being violated, they shall prosecute or cause to be prosecuted all such corporations or persons guilty of such violation. In order to enable said board of transportation to efficiently perform their duties under this act, it is hereby made their duty to cause one of their number, at least once in six months, to visit each county in the state in which is or shall be located a public warehouse, and personally inquire into the management of such warehouse business.

4509. **Statement by public warehousemen.**—It shall be the duty of every owner, lessee, and manager of every public warehouse in this state to furnish in writing, under oath, at such times as said board of transportation shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman.

4510. **Cancellation of warehouse licenses.**—Said board of transportation are hereby authorized to hear and determine all applications for the cancellation of warehouse licenses in this state which may be issued in pursuance of any laws of this state, and for that purpose to make and adopt such rules and regulations concerning such hearing and determination as may from time to time by them be deemed proper. And if, upon such hearing, it shall appear that any public warehouseman has been guilty of violating any law of this state concerning the business of public warehousemen, said commissioners may cancel and revoke the license of said public warehouseman, and immediately notify the officer who issued such license of such revocation and cancellation; and no person whose license as a public warehouseman shall be canceled or revoked shall be entitled to another license or to carry on the business in this state of such public warehouseman, until the expiration of not less than six months from the date of such revocation and cancellation, and until he shall have again been licensed; *Provided*, That this section shall not be construed as to prevent any such warehouseman from delivering any grain or other property on hand at the time of such revocation or cancellation of his said license. And all licenses issued in violation of the provisions of this section shall be deemed null and void.

4511. **Power to examine books, etc.**—The property, books, records, accounts, papers and proceedings of all such public warehousemen shall at all times, during business hours, be subject to the examination and inspection of the said board of transportation, and they shall have power to examine under oath or affirmation any and all owners, managers, lessees, agents and employees of such public warehouses and other persons, concerning any matter relating to the condition and management of such business.

4512. **May examine witnesses, etc.**—In making any examinations as contemplated in this act, or for the purpose of obtaining information pursuant to this act, said board of transportation shall have the power to issue subœpnas for the attendance of witnesses as may administer oaths. In case any person shall willfully fail or refuse to obey said subpœnas, it shall be the duty of the county court of any county, upon application of said board of transportation, to issue an attachment for such witness, and compel such witness to attend before the said board of transportation, and give his testimony upon such matters as shall be lawfully required by the said board of transportation, and the said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court.

4513. **Penalty against witnesses.**—Any person who shall willfully neglect or refuse to obey the process of subpœna issued by said board of transportation, and appear and testify as therein required, shall be guilty of a misdemeanor, and shall be liable to an indictment in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense by a fine of not less twenty-five dollars ($25) nor more than five hundred dollars ($500), or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had.

4514. **Penalty against public warehousemen, etc.**—Every railroad corporation, and every owner, lessee, manager, or employee of any public warehouse who shall willfully neglect to make and furnish any report required in this act at the time herein required, or who shall willfully and unlawfully hinder, delay, or obstruct said board of transportation in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense, to be recovered in an action of debt in the name and for the use of the people of the state of Nebraska.

4515. **Attorney general and county attorney to prosecute suits.**—It shall be the duty of the attorney general and the county attorney in every district and county, on the request of said board of transportation, to institute and prosecute any and all suits and procedings which they or either of them shall be directed by said board of transportation to institute and prosecute for a violation of this act or any law of this state concerning public warehouses, or the officers, employees, owners, operators, or agents of any such public warehouses.

4516. **In name of people.**—All such prosecution shall be in the name of the people of the state of Nebraska, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same. No suits commenced by said board of transportation shall be dismissed except said board shall consent thereto.

4517. **Rights of individuals saved.**—This act shall not be so construed as to waive or affect the right of any person injured by the violation of any law in regard to public warehouses from prosecuting for his private damages in any manner allowed by law.

4518. **Board of transportation to estimate grades.**—Within thirty days after this act becomes a law the said board of transportation shall establish a proper number and standard of grades for the inspection of grain, and may alter or change the same from time to time; *Provided,* No modification or change of grades shall be made, or any new ones established, without public notice being given of such contemplated change for at least thirty days prior thereto, by publication in one or more daily newspapers printed in each city containing warehouses of Class A; *And provided further,* That no mixture of old and new grades, even though designated by the same name or distinction, shall be permitted while in store.

4519. **Committee of appeals.**—Within twenty days after this act takes effect the said board of transportation shall appoint three discreet and competent persons to act as a committee of appeals in every city wherein is located a public warehouse of Class A, who shall hold their office for one year, and until their successors are appointed. At every year thereafter a like committee shall be appointed by the said board of transportation, who shall hold their office for one year, and until their successors are appointed; *Provided,* Said board of transportation shall have [power] in their discretion to remove from office any member of said committee at any time, and fill vacancies thus created by the appointment of other discreet persons.

4520. **Appeals—Notices.**—In all matters involving doubt of* the part of the chief inspector or any assistant inspector as to the proper inspection of any lot of grain, or in case any owner, consignee, or shipper of grain, or any warehouse manager shall be dissatisfied with the decision of the chief inspector or any assistant inspector, an appeal may be made to said committee of appeal, and the decision of a majority of said committee shall be final. Said board of transportation are authorized to make all necessary rules governing the manner of appeals as herein provided. And all complaints in regard to the inspection of grain, and all notices requiring the services of the committee on appeal, may be served on said committee or may be filed with the warehouse registrar of said city, who shall immediately notify said committee of the fact and who shall furnish said committee with such clerical assistance as may be necessary for the proper discharge of their duties. It shall be the duty of said committee, on receiving such notice, to immediately act on and render a decision in each case.

4521. **Committee on appeals—Oath—Bond—Who may serve on.**—The said committee on appeals shall, before entering upon the duties of their office, take an oath as in the case of other inspectors of grain, and shall execute a bond in the penal sum of five thousand dollars ($5,000) with like conditions as is provided in the case [of] other inspectors of grain, which said bond shall be subject to the approval of the said board of transportation. It is further provided that the salaries of said committee on appeals shall be fixed by the said board of transportation, and be paid from the inspection fund, or by the party taking the appeal, under such rules as the board of transportation shall prescribe, and all necessary expenses incurred in carrying out the provisions of this act, except as herein otherwise provided, shall be paid out of the fund collected for the inspection service upon the order of the said board of transportation on the state treasurer; *Provided*, That no person shall be appointed to serve on the committee of appeal who is a purchaser of or a receiver of grain or other articles to be passed upon by said committee.

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* So in original.

4522. **Registered for collection—Inspection fees.**—No grain shall be delivered from store from any public warehouse of Class A for which, or representing which, warehouse receipts shall have been issued, except upon the return of such receipts stamped or otherwise plainly marked by the warehouse registrar with the words "Registered for collection," and the date thereof, and said board of transportation shall have power to fix the rates of charges for the inspection of grain both into and out of the public warehouse, which charges shall be a lien upon all grain so inspected, as may be collected of the owners, receivers, or shippers of such grain, in such manner as the board of transportation may prescribe.

4523. **Deposit of inspection fund.**—All moneys collected for the inspection fund shall be deposited with the state treasurer, who shall be liable under his official bond for the proper care of same, and no payment shall be made therefrom except by order of the said board of transportation as they may prescribe.

4524. **Weighmaster, appointment of.**—That there shall be appointed by the state board of transportation in all cities where there is state inspection of grain, a state weighmaster, and such assistance as shall be necessary.

4525. **Duties.**—Said state weighmaster and assistants shall, at the place aforesaid, supervise and have exclusive control of the weighing of grain and other property which may be subject to inspection, and the inspection of scales, and the action and certificate of such weighmaster and assistants in the discharge of their aforesaid duties shall be conclusive upon all parties in interest.

4526. **Fix fees.**—The said board of transportation shall fix the fees to be paid for the weighing of grain or other property, which fees shall be paid equally by all parties interested in the purchase and sale of the property weighed, or scales ininspected and tested.

4527. **Weighmaster,—Qualifications—Bond—Compensation.**—Said state weighmaster and assistants shall not be a member of any board of trade or association of like character. They shall give bonds in the sum of five thousand dollars ($5,000), conditioned for the faithful discharge of their duties, and shall receive such compensation as the board of railroad and warehouse commissioners shall determine.

4528. **May adopt rules.**—The said board of transportation shall adopt such rules and regulations for the weighing of grain or other property as they shall deem proper.

4529. **Neglect of duty—Penalty.**—In case any person, warehouseman, or railroad corporation, or any of their agents or employees, shall refuse or prevent the aforesaid state weighmaster or either of his assistants from having access to their scales, in the regular performance of their duties, in supervising the weighing of any grain or other property in accordance with the tenor and meaning of this act, they shall forfeit the sum of one hundred dollars ($100) for each and every offense, to be recovered in an action of debt before any justice of the peace in the name of the people of the state of Nebraska, such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all costs of prosecution.

NOTE.—I observe that this bill fails to provide for the fixing of rates of storage, the same evidently being inadvertently omitted in the enrollment. Inasmuch as the bill in its present shape contains many provisions of benefit to those engaged in the producing and the storage of grain, it receives my approval. JAMES E. BOYD, *Governor.*

CHAPTER 55.—WEIGHTS AND MEASURES.

Secs. 4530 to 4535 formed ch. 55, R. S. 1866, p. 391.

4530. The **standard** of **weights** and linear **measures** shall be the same as that established by act of congress for the several states, except that the ton shall consist of two thousand pounds.

4531. A **bushel** shall **consist** of two thousand one hundred and fifty cubic inches. The half-bushel, peck, and half-peck shall consist of the proper division and subdivision of a bushel.

4532. A **gallon** shall consist of two hundred and thirty-one cubic inches.

4533. A **pound** avoirdupois shall consist of seven thousand grains in Troy weight.

4534. A **bushel** of each of the articles enumerated in this section shall consist of the **number of pounds** respectively affixed to each, viz.:

	POUNDS.
Apples, dried, per bushel	24
Barley	48
Beans, castor	46
Beans, white	60
Bran	20
Buckwheat	52
Coal, stone	80
Corn, ear	70
Corn, shelled	56
Corn meal	50
Hair for plastering	8
Hay per ton	2000
Honey, strained, per gallon	12
Lime, unslacked, per bushel	80
Malt, barley	30
Oats	32
Onions	57
Onion sets	25
Peaches, dried	33
Potatoes, Irish	60
Potatoes, sweet	50
Peas	60
Rye	56
Seeds, Blue grass	14
Clover	60
Flax	56
Hemp	44
Hungarian grass	50
Millet	50
Osage orange	32
Sorghum	30
Timothy grass	45
Salt	50
Turnips	55
Wheat	60

Amended 1883, p. 326.

4535. Any person who shall knowingly keep **false weights** or **measures**, and shall buy and sell articles thereby, shall forfeit and pay, upon conviction, a fine of not less than five nor more than twenty-five dollars, to be recovered before any court having competent jurisdiction; the fine shall be appropriated to the use of the common schools in the same county; he shall also be liable to the injured party in double the amount of damages, with the costs of suit.

As to this penalty, see 6, 37.

CHAPTER 56.—APPENDIX TO GENERAL LAWS.

WORLD'S COLUMBIAN EXPOSITION.

Sec. 4536. "An act to provide for a presentation of the products, resources, and possibilities of the state of Nebraska at the World's Columbian Exposition, to be held at the city of Chicago, Illinois." 1891, p. 395. In force August 1. See preface.

4536. Whereas, by an act of congress, the United States purpose, and has provided for celebrating the four hundredth (400th) anniversary of the discovery of America by Christopher Columbus, by holding an international exhibition of arts, industries, manufactories, and products of the soil, mine, and seas, in the city of Chicago, in the state of Illinois, in the year eighteen hundred and ninety-two (1892); and Whereas, provisions are made and provided in said act, that each state and territory in the union may and is invited to participate in said celebration and exposition; and Whereas, the location of said exposition is so near Nebraska's door, and all environments so remarkably auspicious to presenting to the best possible advantage, and advertise to the world in substantial manner, her products, resources, and possibilities, and thereby extend invitation to capital and population to engage with us in expanding the wealth and greatness of the commonwealth: Therefore,

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. That for the purpose narrated in the foregoing preambles, and to defray the necessary expenses thereof, there be and is hereby **appropriated** from the state treasury, from **funds** not otherwise appropriated, the sum of fifty thousand dollars ($50,000), or so much thereof as may be found necessary, the same to be expended and accounted for in accordance with the conditions and stipulations as hereinafter provided; *Provided*, That not to exceed five thousand dollars ($5,000) of this appropriation shall be expended before January first (1st), 1892.

SEC. 2. That within ten (10) days from the passage and taking effect of this act the governor shall appoint a **state commission,** to be known as the "Nebraska Columbian Commission," to consist of six (6) members, two (2) from each of the three (3) congressional districts of the state, and to be selected two (2) from each of the three (3) political parties, namely, the independent, democratic, and republican organizations. The governor may, in his discretion, and in like manner, in all respects, appoint alternates for each commissioner, who shall assume and perform the duties of commissioner when from any cause his principal may be unable to perform devolving duties.

SEC. 3. The **duties** of said commission shall be to have general charge and management, in the state at large, in creating for presentation at the said Columbian exhibition at Chicago a state exhibit of all the industries, products, and resources of the state.

SEC. 4. The **compensation** for each commissioner or alternate, when acting for a principal, shall be five (5) dollars per day for each day actually devoted to such official service as duty may require; and in addition, actual traveling expenses while so engaged. Time to be computed while en route to and from place of meetings or points of work. Compensation to be paid from the appropriation provided in this act.

SEC. 5. The **term** of office for each commissioner and alternate shall be from date of his appointment until the end of the Columbian exposition at Chicago, and the closing up of the state work in connection therewith, not to exceed ninety (90) days from the date of the closing of said Columbian exposition at Chicago.

SEC. 6. That within ten (10) days from the passage and taking effect of this act, the governor shall appoint one (1) **commissioner general,** who shall be a man of known experience, and of acknowledged fitness and qualification for the duties of such office.

SEC. 7. The term of office of the commissioner general shall be the same as provided for commissioners and alternates. He shall devote the whole of his time, during the term of his office, to the **duties** of the position. He shall have control of all details pertaining to the exhibit at Chicago, its arrangement, installation, management while in place, and dismantling of the same, under a general supervision of the executive council and the state commission. He shall be *ex-officio* member of the state commission, to advise and vote only in case of a tie. He shall receive a **salary** of two thousand five hundred dollars ($2,500) per annum, payable quarterly from the funds provided for in this act, and in addition, his actual traveling expenses, to be computed in like manner as that provided for the compensation of state commissioners. He is hereby authorized and empowered to appoint such superintendents, **assistants,** and employ such clerical and other force as he may find necessary for the successful presentation of the work of his office, the same to be paid from the funds appropriated by this act.

SEC. 8. The **president** of the state commission shall be its **disbursing officer,** through whose hands all moneys drawn and expended must pass. He shall give bonds, to be approved by the governor, in a sum not less than one hundred thousand dollars ($100,000).

SEC. 9. The governor shall, at the earliest convenience after the passage of this act and the appointment of the commission and commissioner general, convene them at the state capital, at a day and place by him named, for **organization.** At this meeting the commission shall proceed by ballot to elect from its members one (1) **president** and **secretary,** whose terms of office shall be the same as for the commission. The president and secretary shall not both be of the same political party. The president and secretary may be compensated for extra service devolving upon them as such, in such sums as the commission may determine, to be paid from the funds provided by the appropriation of this act.

SEC. 10. The president, secretary, and commissioner general shall compose an **executive council,** with full power to act in all matters, under general supervision and direction of the commission.

SEC. 11. The president may have power in his discretion to call **meetings** of the commission at any time and place he may deem proper; and shall do so on call signed by a majority of the members thereof.

SEC. 12. The **appropriation** provided for in this act can be **drawn** from the state treasury only on **estimates** made by the executive council, signed by the president and secretary, and no one (1) estimate shall exceed the sum of six thousand (6,000) dollars, except in case of an emergency, and then by unanimous vote of the commission and approved by the governor. Each estimate shall be followed in a reasonable length of time, and before another estimate can be made, with itemized, detailed vouchers, to be certified by the president and secretary of the commission, and approved by the governor.

SEC. 13. The **secretary** shall keep an accurate **record** of all the proceedings, both of the commission and executive council.

SEC. 14. The **commissioner general** shall render to the executive council a **quarterly statement** of his official doings in detail in all respects, and which shall be filed with the secretary.

SEC. 15. **Members** of the commission, alternates, and the commissioner general may, for cause, be **removed** at any time by the governor, and **vacancies** occurring by reason of any cause, filled by him for unexpired terms. In so doing, the political division and relation as in the original formation shall be maintained.

SEC. 16. At the **close of** its **service** the commission shall render to the governor a full and detailed **statement** of all its proceedings, which shall include a complete list of all disbursements and catalogue of exhibits presented at the Columbian exposition.

SEC. 17. Nothing in this act shall be construed to create any **liability** on the part of the state in excess of the appropriation herein named.

PART III.

THE CODES OF CIVIL AND CRIMINAL PROCEDURE.

CODE OF CIVIL PROCEDURE.*

PRELIMINARY PROVISIONS.

4537 (1). The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions and all proceedings under it shall be **liberally construed,** with a view to promote its object and assist the parties in obtaining justice.

Especially should the construction be liberal as to the provisions respecting the appearance of parties and the making up of issues, to the end that a full and fair hearing of cases on their merits may be had. **14,** 301 (15 N. W., 719). Provisions of code construed liberally. **2, 137.**

TITLE I.—Form of Civil Actions.

4538 (2). The distinction between actions at law and suits in equity, and the form of all such actions and suits heretofore existing, are abolished; and in their place there shall be hereafter but **one form of action,** which shall be called a civil action.

Amended 1867, p. 71. Distinction between actions at law and suits in equity not abolished. Nature of distinction stated. **4,** 575. Distinction between law and equity abolished. **3, 115.**

4539 (3). In such action, the party complaining shall be known as the **plaintiff,** and the adverse party as the **defendant.**

4540 (4). There can be **no feigned issues;** but a question of fact not put in issue by the pleadings may be tried by a jury, upon an order for the trial, stating distinctly and plainly the question of fact to be tried; and such order is the only authority necessary for a trial.

In equity cases, court may submit special facts to a jury. **10,** 189 (4 N. W., 1040).

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* The present Code of Civil Procedure is that contained in, and adopted with, the Revised Statutes of 1866, p. 683, with the modifications made by subsequent legislatures. Acts which have not expressly amended the Code, but whose subject-matter is analogous to its provisions, are inserted therein, and may be distinguished from the original by the absence of duplicate section members. Prior to the Code of 1866, the following, respectively, were in force in this state:

1. An act adopting certain parts of the Code of Iowa. 1855 p. 55. In force March 16.
2. An act respecting practice and proceedings in courts of justice, and for other purposes. 1857 (3d sess.), p. 41. Approved February 13.
3. An act to establish a Code of Civil Procedure. 1858, p. 109. In force April 1, 1859. This Code appears to have been substantially re-enacted by that of 1866, forming the basis for the first eighteen titles thereof.

There was also "An act for revising, consolidating, and preparing a general code for the territory of Nebraska," 1855 6, p. 35; but this is of interest rather as the first attempt to consolidate the laws of Nebraska, than as a landmark in the history of its codes of civil practice.

TITLE II.—Time of Commencing Civil Actions.

4541 (5). Civil actions can only be commenced within the time prescribed in this title, after the cause of action shall have accrued.

Statute is to be construed as one of repose, not of payment. **5**, 370. Payment of part by member of dissolved partnership will take cause out of statute and charge the individual member. **5**, 375. Statute of limitations does not run against the state. **11**, 405 (9 N. W., 543). See **21**, 483 (32 N. W., 307); **23**, 777 (37 N. W., 657).

4542 (6). An action for the recovery of the title or possession of lands, tenements, or hereditaments, can only be brought within ten years after the cause of such action shall have accrued. *This section shall be construed to apply also to mortgages.

Original section read twenty-one years. Amended and all after * added 1869, p. 67. Statute of repose. Must recover on the strength of his own title, not on the weakness of his adversary. **9**, 233 (2 N. W., 705). Occupant must not only claim adverse but must occupy adversely during the entire period. **21**, 386 (32 N. W., 162). When statute vests occupant with the property. **4**, 46. Statute begins to run at once on breach of covenant against incumbrances. To be considered as a statute of repose. **7**, 402. Statute of limitation will not run against the *cestui que trust* in possession of trust property and bar his right to the same in favor of the naked trustee. **21**, 412 (32 N. W., 157). Foreclosure of mortgages barred in ten years. **8**, 268. Fencing, cultivation, paying taxes, etc., constitute adverse possession. **27**, 62 (42 N. W., 915). A deed absolute, but construed as a mortgage upon unoccupied lands, statute of limitations does not begin to run until tender of money due and refusal to reconvey. **1**, 244. Mortgage construed as collateral security to note and void when statute of limitations has run against the note. **2**, 28. Suit to foreclose mortgage is not barred until ten years from time it is due. **14**, 418 (16 N. W., 433). The title of adverse claimant need not be a valid one. Open, notorious, exclusive, adverse possession for ten years gives good title. **17**, 237 (22 N. W., 460). Tax deed though void is color of title. Color of title is not necessary to adverse possession. **17**, 81 (22 N. W., 453); **17**, 94 (22 N. W., 226). Action to foreclose mortgage may be brought at any time within ten years. **12**, 464 (12 N. W., 1); **17**, 252 (22 N. W., 690). Lease by defendant in ejectment of plaintiff's uninclosed land held not to stop running of statute as to an adjoining strip enclosed by defendant. **24**, 669 (39 N. W., 839). Statute not suspended on account of minority of children when it began to run in lifetime of father. **24**, 674 (39 N. W., 841). Taking of tax deed does not suspend statute. **27**, 54 (42 N. W., 749). On facts stated, held that defendant being in possession for ten years action barred. **22**, 696 (35 N. W., 883); **4**, 45. See **23**, 75 (36 N. W., 361).

4543 (7). Any person entitled to commence any action for the recovery of the title or possession of any lands, tenements, or hereditaments, who may be under any legal disability when the cause of action accrues, may bring such action within ten years after disability is removed, and at no time thereafter.

Amended 1873; G. S., 525.

4544 (8). An action for the **forcible entry and detainer,** or forcible detainer only, of real property can only be brought within one year after the cause of such action shall have accrued.

4545 (9). **Civil actions, other** than for the recovery of real property, can only be brought within the following periods, after cause of action shall have accrued:

A partial payment or new promise made after debt is barred will revive it. **16**, 21 (19 N. W., 615, 970). General demurrer raises question of limitations. **16**, 4 (19 N. W., 783).

4546 (10). Within five years, an action upon a specialty, or any agreement, **contract,** or promise **in writing,** or **foreign judgment.**

Village warrants barred in five years. **24**, 242 (38 N. W., 737). Action to foreclose tax lien barred in five years after time for redemption expires. **21**, 547-8 (32 N. W., 598); **27**, 434-5 (43 N. W., 256). Action for damages for a breach of covenant may be brought within five years. **21**, 533 (32 N. W., 574). A promissory note secured by mortgage is not a specialty within the meaning of the statute. **5**, 88. Foreign judgment properly authenticated is conclusive upon the subject-matter but not upon the jurisdiction of the court in which it was pronounced. **6**, 528. Action on foreign judgment may be defended when such judgment was obtained by fraud. **22**, 311 (34 N. W., 891). Statute of limitations for and against municipal corporations. **22**, 200 (34 N. W., 377). Statute runs during temporary absence from the state. **4**, 29. Defendant must have lived five full years in Nebraska before action on foreign judgment is barred. **24**, 180, 186 (38 N. W., 820). See **25**, 691. Judgment of other state court is a foreign judgment. **25**, 107 (41 N. W., 111). See **21**, 679 (33 N. W., 478).

4547 (11). Within four years, an action upon a **contract not in writing**, expressed, or applied; an action upon a liability created by statute, other than a forfeiture or penalty.

Has no application to a tax. **18,** 202 (24 N. W., 705). Applies to money received by agent for principal. **20,** 593 (31 N. W., 240).

4548 (12). Within four years, an action for **trespass** upon real property; an action for taking, detaining, or injuring **personal property,** including actions for the specific recovery of personal property; an action for an **injury** to the rights of the plaintiff, **not arising on contract,** and not hereinafter enumerated; an action for relief on the ground of **fraud,** but the cause of action in such case shall not [be] deemed to have accrued until the discovery of the fraud.

Statute commences to run as soon as plaintiff learns facts which, on inquiry suggested thereby, would lead to the discovery of the fraud. **28,** 479 (44 N. W., 490). Statute does not begin to run until discovery of fraud. **4,** 95. Action by junior incumbrancer on ground of fraud shall be brought within four years from the discovery of the fraud. **21,** 421 (32 N. W., 74). Prosecution for bastardy commenced more than four years after birth of child not barred where evidence shows that accused is putative father, and that mother has continued to insist on his supporting it. **24,** 781 (40 N. W., 308). See **24,** 793 (40 N. W., 309); **28,** 571 (44 N. W., 736).

4549 (13). Within one year an action for **libel, slander, assault** and battery, **malicious prosecution,** or false imprisonment; an action upon a statute for a **penalty** or forfeiture, but where the statute giving such action prescribes a different limitation, the action may be brought within the period so limited.

4550 (14). An action upon the **official bond** or **undertaking** of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, or in any case whatever required by statute, can only be brought within ten years.

Action on county treasurer's bond may be brought any time within ten years. **22,** 229 (34 N. W., 629).

4551 (15). Actions brought for damages growing out of the **failure** or want **of consideration** of contracts, express or implied, or for the recovery of money paid upon contracts, express or implied, the consideration of which has wholly or in part failed, shall be brought within four years.

4552 (16). An action for **relief** not hereinbefore **provided for,** can only be brought within four years after the cause of action shall have accrued.

See **21,** 433 (32 N. W., 74).

4553 (17). If a **person** entitled to bring any action mentioned in this title, except for a penalty or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this title after such **disability** shall be removed. The absence from the state, death, or other disability of a non-resident, save the cases mentioned in this section, shall not operate to extend the period within which **actions in rem** shall be commenced by and against such non-resident or his representatives.

In proceeding *in rem* absence from the state does not operate to extend time. **5,** 466.

4554 (18). All **actions** or causes of action which are or have been **barred** by the laws of this state, or any state or territory of the United States, shall be deemed barred under the laws of this state.

Intended to include mortgages. **5,** 89. See **3,** 332; **27,** 255 (42 N. W., 1039).

4555 (19). An **action** shall be **deemed commenced,** within the meaning of this title, as to the defendant, at the date of the summons which is served on him; where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication shall be regularly made.

Statute of limitation stops running at the date of summons which is served, and in case of constructive service is at the date of the first publication. **19,** 36 (26 N. W., 614). An *alias* summons in proceedings in error issued more than a year from date of final order is too late. **13,** 231 (13 N. W., 212). Cited, **11,** 343 (7 N. W., 537).

4556 (20). If, when a cause of action accrues against a **person,** he be **out of the state,** or shall have absconded or **concealed** himself, the period limited for the commencement of the action shall not begin to run until he come into the state, or while he is absconded or concealed; and if after the cause of the action accrues he depart from the state, or abscond, or conceal himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

Person absent from the state or absconding statute does not run against. **22,** 553 (35 N. W., 411). Debtor must reside for the full statutory time within the state before action is barred. **9** 502 (4 N. W., 85). Where party makes note in another state and continues to reside there over three years and then removes to Nebraska, he cannot add the time resided there to time resided here to make up the five years' limitation. **12,** 501 (11 N. W., 752). This section applies to all personal causes of action whether they accrue within or without this state or in favor of a resident or non-resident thereof. **12,** 472 (11 N. W., 729). Cited, **22,** 186.

4557 (21). When a cause of **action** has been fully **barred** by the laws of any state or country where the defendant has previously resided, such bar shall be the same defense in this state as though it had arisen under the provisions of this title.

4558 (22). In any cause founded on contract, when any **part** of the principal or interest shall have been **paid,** or an **acknowledgment** of an existing liability, debt, or claim, or any **promise** to pay the same, shall have been made **in writing,** an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment, or promise.

A promise to be available must be in writing. **20,** 594 (31 N. W., 240). Part payment on a promissory note removes the bar of the statute. **14,** 194 (15 N. W., 345). The payment of a dividend by the assignee of an insolvent does not renew the debt. **17,** 90 (22 N. W., 229). How partial payments applied with reference to statute. **23,** 587 (37 N. W, 267). See **16,** 21; **16,** 55 (19 N. W., 697); **11,** 418 (8 N. W., 391.)

4559 (23). In all actions upon bills of exchange or promissory notes, or other written instruments, whenever any of the **parties** thereto are **designated** by the **initial** letter or letters, or some **contraction** of the Christian or first name or names, it shall be sufficient to designate such person by the name, initial letter or letters, or contraction of the first name or names, instead of stating the Christian or first name or names in full.

4560 (24). Any **company** or **association** of persons formed for the purpose of carrying on any trade or business, or for the purpose of holding any species of property in this state, and not incorporated, may sue and be sued by such usual **name** as such company, partnership, or association may have assumed to itself or be known by, and it shall not be necessary in such case to set forth in the process or pleading, or to prove at the trial the names of the persons composing such company.

Failure to set out names of partners in petition not fatal. **20,** 324 (30 N. W., 53). Action against C. C. and H. R., in business under firm name of C. & R., is an action against the individual members; if one only can be served with summons, jurisdiction over him is required. **27,** 200 (43 N. W., 344). A petition in which plaintiffs are set out as "Weiss & Mall Co., a partnership doing business in the state of Iowa," is bad. **28,** 566 (44 N. W., 470). In actions against partners on partnership contracts, all partners should be joined, but omission of a party as co-defendant not ground for nonsuit and can only be taken advantage of by plea in abatement properly verified. **1,** 290. Makers of note payable to "People's Bank" estopped to deny payee's legal capacity to sue thereon. **27,** 580 (43 N. W., 347). Assets of partnership liable for its debts. **3,** 261; Incoming partner not liable for previously contracted debts unless there is a special contract with good consideration. **6,** 326. Attachment brought by non-resident partnership is not void. **12,** 628 (12 N. W., 95). May be proven by admissions of the individual members. **4,** 378. Sufficiency of notice, query. **1,** 290. See **25,** 239 (41 N. W., 151).

4561 (25). **Process against** any such company or **firm** shall be **served by** a copy left at their usual place of doing business within the county, with one of the members of such company or firm, or with the clerk or general agent thereof, and executions issued on any judgments rendered in such proceedings shall be levied only on partnership property.

Service on partnership at its usual place of business sufficient. **22,** 748 (36 N. W., 147). This is cumulative and does not prevent service on the individuals. **25,** 698 (41 N. W., 765).

4562 (26). In cases where a **company** shall sue in its partnership name, such company shall procure the writ to be endorsed by a responsible surety, resident of the county, for costs, or otherwise give **security for costs.**

Requirement of security for costs is not jurisdictional. **12,** 40 (10 N. W., 466). Security for costs is an essential prerequisite to maintenance of an action. **7,** 246. But a firm may be surety for plaintiff. **17,** 209 (22 N. W., 422).

4563 (27). If the plaintiff, in any **judgment** so rendered **against** any **company** or partnership, shall seek to charge the **individual property** of the persons composing such company or firm, it shall be lawful for him to file a bill in chancery against the several members thereof, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and to have a decree for the debt, and an award of execution against all such persons, or any of them, as may appear to have been members of such company, association, or firm.

Where action is brought against the partners individually, upon a judgment obtained against the firm, the petition must allege that the partnership property is insufficient to satisfy the judgment. **10,** 262 (4 N. W., 977); **14,** 109 (15 N. W., 232).

Sec. 28 repealed. G. S., 713.

TITLE III.—PARTIES TO CIVIL ACTIONS.

4564 (29). Every **action** must be prosecuted **in** the **name of** the **real party** in interest, except as otherwise provided in section thirty-two.

Real party in interest is party entitled to proceeds. **22,** 684 (35 N. W., 869). A naked assignment will not support an action by the assignee. **23,** 462 (36 N. W., 755). Where a chose in action is assigned, the assignee is the proper person to bring an action thereon. **1,** 328. Action will lie in name of county against treasurer for money due the county. **22,** 827 (36 N. W., 515). Action maintained in the name of real party in interest. **4,** 185. A person not nominally a party to a suit must be shown by the petition to have some interest in proceedings before he will be allowed to defend. **8,** 468. See **25,** 238 (41 N. W., 151); **29,** 292 (45 N. W., 631).

4565 (30). The **assignee** of a thing in action may maintain an **action** thereon **in his own name** and behalf, without the name of the assignor.

4566 (31). In the case of an **assignment** of a thing in action the action by the assignee shall be without prejudice to any set-off or other **defense** now allowed; but this section shall not apply to negotiable bonds, promissory notes, or bills of exchange, transferred in good faith, and upon good consideration before due.

Endorsee for collection may sue in his own name, but subject to equitable defenses of maker. **27,** 430–1 (43 N. W., 241). Defense available against one not an innocent purchaser; knowledge of agent charges principal. **20,** 586 (31 N. W., 387). Assignment of mortgage only to innocent purchaser does not prevent plea of usury. **19,** 642 (28 N. W., 286). Assignment of notes secured by real estate mortgage carries the security with it. **4,** 209; **5,** 210.

4567 (32). An executor, administrator, guardian, **trustee** of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. **Officers** may sue and be sued in such name as is authorized by law, and official bonds may be sued upon in the same way.

Agent may bring suit in his own name when note is made to him or order. **13,** 208 (13 N. W., 201). Official bonds, how prosecuted. **9,** 434 (2 N. W., 742–892). Action by husband for surrender value of insurance policy on his own life in favor of his wife, sustained. **11,** 172 (7 N. W., 745). Cited, **29,** 558 (45 N. W., 788).

Secs. 33 and 34 repealed. G. S., 713.

4568 (35). If a **husband and wife** be **sued** together, the wife may defend for her own right; and, if the husband neglect to defend, she may defend for his right also.

4569 (36). The action of an **infant** must be brought by his guardian or next friend. When the **action** is brought **by** his next friend the court has power to dismiss it if it is not for the benefit of the infant; or to substitute the guardian of the infant, or any person, as the next friend.

4570 (37). The **guardian,** or the next friend, is **liable** for the costs of the action brought by him, and, when he is insolvent, the court may require security for them. Either may be a witness in an action brought by him.

Infant not liable for costs. If becoming of full age during the pendency of the action he disclaims all benefits, cannot be charged with costs. **8,** 343.

4571 (38). The defense of an **infant** must be by a **guardian for** the **suit,** who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a probate judge. The appointment cannot be made until after service of the summons in the action as directed by this code.

See **15,** 297 (18 N. W., 57).

4572 (39). The **appointment** may be made under the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect so to apply, the appointment may be made upon the application of any friend of the infant, or on that of plaintiff in the action.

4573 (40). All **persons** having an interest in the subject of the action, and in obtaining the relief demanded, may be **joined as plaintiffs,** except as otherwise provided in this act.

Tenants in common may join in ejectment for possession of real estate. **19,** 701 (28 N. W., 325). All parties interested in a replevin bond may join in a suit upon it. **14,** 163 (15 N. W., 219). Applicable to actions in replevin. **21,** 710 (33 N. W., 254).

4574 (41). Any **person** may be **made** a **defendant** who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Cannot be changed into a suit in equity nor into one for money, neither does offset or counter-claim lie. **20,** 299 (30 N. W., 64); **22,** 586 (36 N. W., 112). All defendants in a joint judgment are necessary parties to proceedings in error. **29,** 622 (46 N. W., 91).

4575 (42). Of the **parties** to the action, those who are **united in interest** must be **joined** as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason being stated in the petition.

Not all contributors to fund by which church edifice was built need join in action to restrain sale thereof. **27,** 396 (43 N. W., 174).

4576 (43). When the **question** is one **of common** or general **interest** of many persons, or when the **parties** are very **numerous,** and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

4577 (44). **Persons severally liable** upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

See **1,** 460.

4578 (45). An **action** does **not abate by** the death, marriage, or other **disability** of a party, or by the transfer of any interest therein during its pendency, if the cause of action survive or continue. In the case of the marriage of a female party, the fact being suggested on the record, the husband may be made a party with his wife; and in the case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be subsitituted in the action.

Transfer of interest of party to his co-plaintiff is no ground for dismissing the action. **13**, 249 (13 N. W., 277). Purchase of plaintiff's interest not canse for dismissal. **20**, 280 (29 N. W., 936). Last clause cited, **13**, 514 (14 N. W., 527). Cited, **12**, 330 and 333 (11 N. W., 303).

4579 (46). The court may determine any controversy between **parties** before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in.

Supreme court on appeal will not adjudicate rights of one not made a party below. **27**, 700, 705 (43 N. W., 423). Assignee not allowed to come in. **14**, 429 (16 N. W., 434). An equity cause in which not all parties were before the district court will be remanded by the supreme court for the purpose of having such parties brought in. **29**, 656 (45 N. W., 636).

4580 (47). When, in an action for the recovery of real or personal property, any **person** having an interest in the property applies to be **made a party**, the court may order it to be done.

The right to the property must be directly in issue. **17**, 403 (22 N. W., 788).

4581 (48). **[Property—Preservation—Interpleader.]**—Upon the affidavit of a defendant before answer in an action upon contract, or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same, as the court may direct, the court may make an order for the safe-keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party, being served with a copy of the order by the sheriff, or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit, or delivery thereof.

4582 (49). The provisions of the last section shall be applicable to an action brought against a **sheriff**, or other officer, for the recovery of personal **property, taken** by him **under execution**, or for the proceeds of such property so taken and sold by him. And the defendant in such action shall be entitled to the benefit of those provisions against the party in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action is brought, was taken under such process.

4583 (50). **[Interested party substituted.]**—In an action against a sheriff, or other officer, for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant, and of the **party** in whose favor the execution issued, permit the latter to be **substituted** as the defendant, security for the costs being given.

Substitution must be made before final judgment. **8**, 467.

Secs. 4584 to 4586. "An act to amend title three (3) of the Code of Civil Procedure of the Compiled Statutes of the state of Nebraska entitled 'Parties to Civil Actions,' and to provide for the intervention of third parties claiming an interest in the event of any suit pending or to be brought in any of the courts of the state of Nebraska." 1887, p. 655. In force July 1.

4584. **Any person** who has or claims an interest in the matter in litigation, in the success of either of the parties to an action, or against both, in any action pending or to be brought in any of the courts of the state of Nebraska, may become a **party to** an **action** between any other persons or corporations, either by joining the plaintiff in claiming what is sought by the petition, or by uniting with the defendants in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, either before or after issue has joined in the action, and before the trial commences.

See **20,** 630 (31 N. W., 488); **22,** 586 (36 N. W., 113).

4585. The court shall determine upon the **intervention** at the same time that the action is **decided,** and if the claim of the intervenor is not sustained he shall pay all **costs** of the intervention.

4586. The intervention shall be by petition, which must set forth the facts on which the intervention rests, and all the pleadings therein shall be governed by the same rules as obtain in regard to other **pleadings** provided for by the code. But if such petition is filed during term the court shall direct the time in which answers thereto shall be filed.

TITLE IV.—The County in which Actions Are to Be Brought.

4587 (51). All actions to recover damages for any **trespass** upon or any injury **to real estate** shall be brought only in the county where such real estate is situated, and all *actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in section fifty-two (52): *First*—For the **recovery** of real property or of an estate or interest therein. *Second*—For the **partition** of real property. *Third*—For the **sale** of real property under a mortgage, lien, or other incumbrance or charge;* *Provided*, All actions now pending in any district court for any of the causes mentioned in this section, not within the county wherein such real estate is situated, shall remain, be tried, and disposed of in the county where commenced.

Original section comprised only matter from * to *; remainder added, 1889, p. 376. **6,** 385. Cited, **12,** 342 (11 N. W., 431); **29,** 501 (46 N. W., 39).

4588 (52). If the real property, the subject of the action, be an entire **tract,** and situated **in two** or more **counties,** or if it consists of separate tracts situated in two or more counties, the action may be brought in any county in which any tract or part thereof is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof may be brought in either of such counties; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

Cited, **11,** 307 (9 N. W., 36); **21,** 683 (33 N. W., 424).

4589 (53). An action to to compel the **specific performance** of a contract of sale of real estate may be brought in the county where the defendants, or any of them, reside.

11, 605 (10 N. W., 525); **20,** 397 (30 N. W., 406).

4590 (54). Actions for the following causes must be brought in the county where the cause, or some part thereof, arose: *First*—An action for the **recovery** of a **fine,** forfeiture, or **penalty,** imposed by the statute; except that, when it is imposed for an offense committed on a river, or other stream of water, or road which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water-course, or road, and opposite to the place where the offense was committed. *Second*—An **action against** a **public officer,** for an act done by him in virtue or under color of his office, or for a neglect of his official duty. *Third*—An action **on** the **official bond** or undertaking of a public officer.

An action on judgment of amercement may be brought against the sureties on sheriff's official bond in county where the amercement was had. **14,** 534 (16 N. W., 827).

4591 (55). An **action** other than one of those mentioned in the first three sections of this title, **against** a **corporation** created by the laws of this state, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

4592 (56). An action against a **railroad company,** or an **owner of a line of** mail **stages,** or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any country through or into which the said road or line passes.

Applies to action against railroad company for damages from overflow caused by one of its bridges. **29,** 501 (46 N. W., 39).

4593 (57). An action other than one of those mentioned in the first three sections of this title, against a **turnpike** road **company,** may be brought in any county in which any part of the road lies.

4594 (58). The **provisions** of this title shall **not apply** in the case of any corporation created by a law of this state whose charter prescribes a place where alone a suit against such corporation may be brought.

4595 (59). An **action** other than one of those mentioned in the first three sections of this title, **against** a **non-resident** of this state or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

4596 (60). Every **other action** must be brought in the county in which the defendant, or some of the defendants, resides, or may be summoned.

Action against maker and several endorsees may be brought in any county where any one of the parties resides or may be summoned, and summonses issued for the others to the counties in which they respectively reside or may be summoned. **14,** 213 (15 N. W., 346). Prosecution for bastardy properly maintained in county where mother resides, though temporarily staying in another county when child was born. **24,** 37 (37 N. W., 943). A *quo warranto* may be brought in supreme court by any citizen. **28,** 455 (44 N. W., 471). Must be a necessary party and not a sham defendant. **23,** 250 (36 N. W., 505). See **29,** 277-8 (45 N. W., 460).

4597 (61). In all cases in which it shall be made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, or when the judge is interested or has been of counsel in the case or subject-matter thereof, or is related to either of the parties, or is otherwise disqualified to sit, the court may, on application of either party, **change** the **place of trial** to some adjoining county, wherein such impartial trial can be had; but if the objection be against all the counties of the district, then to the nearest county in the adjoining district.

Amended 1873; G. S., 532. That numerous persons in the county are biased or prejudiced is not ground for change in a civil case. **25,** 48 (40 N. W., 604).

Secs. 4598 and 4599. "An act to amend the code of civil procedure. 1873; G. S., p. 712.

4598. When an order is made transferring a cause for trial, as provided in the preceding section, the clerk of the court must transmit the pleadings and **papers** therein to the clerk of the court to which it is **transferred.** The **costs** and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action is transferred shall have and exercise over the same the like **jurisdiction** as if it had been originally commenced therein.

4599. When an action affecting the title of possession of real estate has been brought in or transferred to any court of a county, other than the county in which the real estate or some portion of it is situated, the clerk of such court must, after **final judgment** therein, **certify** such judgment under his seal of office, and transmit the same to the corresponding court of the county in which the real estate affected by the action is situated. The clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment **transferred** from ——— court (naming the proper court).

TITLE V.—Commencement of a Civil Action.

CHAPTER I.—MANNER OF COMMENCING ACTIONS.

4600 (62). A civil action must be commenced by filing in the office of the clerk of the proper court a **petition,** and causing a **summons** to be issued thereon.

Amended 1869, p. 63; 1871, p. 111. Summons must be served before jurisdiction had. **9,** 536 (4 N. W., 319). Not necessary to issue new summons on amended petition. **28,** 692 (45 N. W., 164). Cited, **10,** 333 (6 N. W., 413).

4601 (63). The plaintiff shall also file with the clerk of the court a **precipe,** stating the names of the parties to the action, and demanding that a summons issue thereon.

4602 (64). The **summons** shall be issued by the clerk, shall be under the seal of the court from which the same shall issue, and shall be signed by the clerk. Its style shall be, "The state of Nebraska, —— county," and it shall be dated the day it is issued. It shall be directed to the plaintiff of the county, and command him to notify the defendant or defendants named therein, that he or they have been sued, and must answer the petition filed by the plaintiff, giving his name at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly. And where the action is for the recovery of money only, there shall be endorsed on the writ the amount to be furnished in the precipe, for which, with interest, judgment will be taken, if the **defendant fail to answer.** If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

Need not be in exact language here given. **17,** 445 (23 N. W., 339). Endorsement of amount only necessary where money judgment alone asked. Judgment cannot exceed endorsement in case of default. **1,** 133; **3,** 219. When the defendant fails to appear, it is error to render judgment for larger amount than is endorsed on the summons. **13,** 35 (13 N. W., 15); **9,** 124 (2 N. W., 345). Where in an unnecessary case an endorsement is made, it should not be misleading or incomplete. **16,** 26 (19 N. W., 454). Jurisdiction attaches to defendant as soon as legally served. **2,** 136. May be amended correcting mistake, and so amended relates back to time of service. **4,** 177.

4603 (65). Where the action is rightly brought in any county, according to the provisions of title four, a **summons** shall be issued **to** any **other county,** against any one or more of the defendants at the plaintiff's request.

Summons may issue from county court to other counties. **14,** 213 (15 N. W., 346). The defendant in the county where suit brought must be a necessary and not a sham defendant. **17,** 560 (23 N. W., 501) See **23,** 250 (36 N. W., 505).

4604 (66). Whenever the time for bringing parties into court is not fixed by statute, the **summons** shall be **returnable** on the second Monday after the day of its date, but when issued to any other county than the one in which the action is brought, it may be made returnable at the option of the party having it issued, on the third or fourth Monday after its date. It shall state the day of the month on which it is returnable.

No discretion vested in either the clerk or court. **3,** 218. When issued to another county, may be made returnable on second Monday if plaintiff so elect. **27,** 853 (44 N. W., 511). Summons returnable on Sunday or holiday not void. **23,** 735 (37 N. W., 637).

4605 (67). When a writ is returned "not summoned," **other writs** may be **issued,** until the defendant or defendants shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time.

Not necessary after amended petition. **6,** 351. *Alias* summons should not issue except on a return of "not summoned," but a failure in this respect was held not fatal. **13,** 32 (12 N. W., 811).

CHAPTER II.—SERVICE OF SUMMONS—ACTUAL SERVICE.

4606 (68). The summons shall be **served by** the officer to **whom** it is directed, who shall endorse on the original writ the time and manner of service. It may also be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be endorsed on the writ. When the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this state, the **return** shall be verified by oath or affirmation.

Where person has been taken into another county to answer a criminal charge, he is exempt from service of summons until a reasonable time has elapsed to enable him to return home. **21,** 458 (32 N. W., 210). Where summons is directed to sheriff of particular county, private person, without appointment, cannot serve it. **13,** 281 (13 N. W., 404).

4607 (69). The **service** shall be by delivering a copy of the summons to the defendant **personally, or** by leaving one **at** his usual place of **residence,** at any time before the return day.

Usual place of residence defined. **22,** 554 (35 N. W., 411). Leaving copy at place of business not good. **8,** 112. Summons served on wife by leaving at house with husband held good after judgment though she never saw it. **28,** 545 (44 N. W., 859). Sheriff's return is not conclusive as to the fact of residence, and defendant may show that place where copy was left was not, at the time, his residence. **14,** 276 (15 N. W., 352). Return of summons against husband and wife, showing only personal service on former, will not support judgment by default against wife. **24,** 135 (38 N. W., 39).

4608 (70). In all cases the **return** must **state** the time and manner of service.

Service good on Harrison Johnson if returned served on "within named H. Johnson." Record of a return of service is absolutely conclusive. **2,** 133.

4609 (71). The officer to whom the summons is directed must **return** the same at the **time** therein stated.

Service on return day good and will support a judgment by default. **1,** 432.

4610 (72). An **acknowledgment** on the back of the summons, or the **voluntary appearance** of a defendant is equivalent to a service.

Admission of service on back of summons held to be equivalent to actual legal service. **21,** 67 (31 N. W., 255). Appearance waives defects in summons. **5,** 106. Appearance for any other purpose than to object to the jurisdiction of the court waives defects in summons. **4,** 512; **3,** 108; **3,** 215. Defendant may appear specially to object to jurisdiction of court. **9,** 504 (4 N. W., 237). Special appearance must be for the sole purpose of questioning the right of the court to proceed, or court will hold it a general appearance. **3,** 220. Special appearance. **8,** 112. Appearance by motion for relief waives all errors in service and gives court jurisdiction. **16,** 96 (19 N. W., 703). Where judgment by default is entered defendant may ask that default be opened, and may then object to the jurisdiction of the court over his person. **23,** 250 (36 N. W., 505). Answer to merits of case, followed by trial, waives defects. **27,** 106 (42 N. W., 918). Where agent enters appearance which is recognized by defendant, who files cross-bill, such appearance cannot be questioned. **1,** 291.

4611 (73). A **summons against** a **corporation** may be **served** upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or last usual place of business of such corporation.

Where the president or chief officer is absent from the county, service may be made upon the treasurer. **13,** 233 (13 N. W., 213).

4612 (74). When the defendant is an incorporated **insurance company,** and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

4613 (75). When the defendant is a **foreign corporation,** having a managing agent in this state, the service may be upon such agent.

Managing agent defined. **1,** 15.

4614 (76). When the defendant is a **minor** under the age of fourteen years, the service must be upon him and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more then fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

Unless it otherwise appears it will be presumed that the officer did his duty; and when service made upon a widow and her children it will be held good. **21,** 682 (33 N. W., 424).

CONSTRUCTIVE SERVICE.

4615 (77). Service may be made **by publication** in either of the following **cases:** *First*—In actions brought under the fifty-first, fifty-second, and fifty-third sections of this code, where any or all of the defendants reside out of the state. *Second*—In actions brought to establish or set aside a will, where any or all of the defendants reside out of the state. *Third*—In actions brought against a non-resident of this state, or a foreign corporation having in this state property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way. *Fourth*—In actions which relate to, or the subject of which is, real or personal property in this state where any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the state or a foreign corporation. *Fifth*—In all actions where the defendant, being a resident of the state, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

Pendency of attachment proceedings was notice to third parties from the date of the publication of notice, and this notice continued during the pendency of the action and until execution of deed. **11,** 127 (7 N. W., 533). Affidavit examined and held sufficient. **20,** 491 (30 N. W., 602). Where petition is filed in supreme court publication must be made in Lancaster county. **12,** 342 (11 N. W., 431). On default after service by publication no other relief can be granted except that claimed by the petition and notice. **28,** 294 (44 N. W., 452). Cited, **13,** 538 (14 N. W., 659); **19,** 689 (28 N. W., 328); **21,** 390 (32 N. W., 170).

4616 (78). Before service can be made by publication, an **affidavit** must be filed, that service of a summons cannot be made within this state, on the defendant or defendants to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed the party may proceed to make service by publication.

Affidavit need not be in language of statute, but all material facts must be stated. **23,** 811 (37 N. W., 681). Sufficient if it state nature of action and that service cannot be had in the state. **15,** 177 (18 N. W., 64). Affidavit must show that defendant is a non-resident of, and that service of summons cannot be made upon him within, this state, or publication is void. **13,** 538 (14 N. W., 659). Not necessary that the grounds of the cause of action shall be stated. **21,** 391 (32 N. W., 170). Where there is not an entire omission to state some material fact, but which is insufficiently set forth, proceedings not void but merely voidable. In case examined, affidavit held sufficient. **21,** 482 (32 N. W., 307). When defendant admits in writing on summons that he is a non-resident, affidavit not necessary. **21,** 71 (32 N. W., 64). Statute does not require the petition to be filed before affidavit is made. **22,** 713 (36 N. W., 151). Defects in affidavit for service cured by affidavit for attachment. **27,** 413 (43 N. W., 179). Affidavit held not good. **15,** 615 (19 N. W., 600).

4617 (79). The **publication** must be made four consecutive weeks in some newspaper printed in the county **where** the petition is filed, if there be any printed in such county; and if there be not, then in some newspaper **printed** in the state, of general circulation in that county. It must **contain** a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

Publication deemed complete on the distribution of the fourth copy. **15,** 31 (16 N. W., 820). Five publications are equally good. **15,** 178 (18 N. W., 64). Cited, **12,** 342 (11 N. W., 431).

4618 (80). Service by publication shall be **deemed complete when** it shall have been made in the manner and for the time prescribed in the preceding section; and such **service** shall be **proved** by the affidavit of the printer or his foreman or principal clerk, or other person knowing the same.

Such proof may be amended like the return of an officer. **23,** 812 (37 N. W., 681). Service by publication for divorce. **8,** 201 (2 N. W., 466).

4619 (81). In all cases where service may be made by publication, and in all other cases where the defendants are non-residents, and the cause of action arose in the state, suit may be brought in the county where the cause of action arose, and **personal service** of the summons may be made **out of** the **state** by the sheriff or some person appointed by him for that purpose. In all cases where service of a summons is made on a person without the state, proof of such service must be made by affidavit, stating the time and manner of service, and such service shall be made in the same manner as summonses are served on parties residing within the state.

Proof of service must be made by affidavit. Without venue, affidavit defective. **7,** 152. See **21,** 71 (32 N. W., 64).

4620 (82). A party against whom a judgment or order has been rendered without other **service** than **by publication** in a newspaper, may, at any time within five years after the date of the **judgment** or order have the same **opened,** and be let in to defend; before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intention to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action he had no actual notice thereof in time to appear in court and make his defense; but the title to any property, the subject of the judgment or order sought to be opened, which by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter-affidavits, to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make his defense.

Applicant must show an interest in subject-matter and a right to be heard. Strangers to record cannot. **16,** 424 (20 N. W., 271). Notice to open may be served on attorney. **20,** 407 (30 N. W., 410). Notice to agent sufficient, when. **15,** 571 (19 N. W., 708). Is a continuation of the original action and service on attorney in original action is good. **17,** 325 (22 N. W., 563). An action is not pending between the rendition and opening of a judgment and a purchaser during that time takes a good title. **15,** 104 (17 N. W., 369). The defendant, served by publication, who has no actual notice of the pendency of the action, has a right to have the judgment opened up, which cannot be denied him by the court when he brings himself within the requirements of the statute. **10,** 239 (4 N. W., 1009); **14,** 316 (15 N. W., 693). An unauthorized appearance by an attorney cannot affect a party's rights. **14,** 304 (15 N. W., 719). This section has no application to proceedings for divorce. **10,** 292 (6 N. W., 467). A vacation of the decree and dismissal of the action does not affect the title of a *bona fide* purchaser while the decree was in force. **18,** 190 (24 N. W., 732). But title of good-faith purchaser is not impaired if opened. **17,** 241 (22 N. W., 462). Section construed to apply to heirs of deceased. **19,** 397 (27 N. W., 391). Cited, **21,** 67 (31 N. W., 255).

4621 (83). In actions where it shall be necessary to make the **heirs** or devisees of any deceased person defendants, and it shall appear by the affidavit of the plaintiff annexed to his petition that the names of such heirs or devisees, or any of them, and their residences, are **unknown** to the plaintiff, **proceedings** may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service as may be deemed proper; if service by publication be ordered, the publication shall not be less than four weeks.

4622 (84). Where the action is against **two or more defendants**, and **one** or more shall have been **served, but not all** of them, the plaintiff may proceed as follows: *First*—If the action be against defendants jointly indebted upon contract, he may proceed against the defendant served, unless the court otherwise direct. *Second*—If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

Cited, 12, 330 (11 N. W., 303).

4623 (85). When the summons has been served or publication made, the **action** is **pending**, so as to charge third persons with **notice** of pendency, and while pending no interest can be acquired by third persons in the subject-matter thereof as against the plaintiff's title; * *Provided, however*, That in all actions brought to affect the title to real property, the plaintiff may, either at the time of filing his petition or afterwards, file, or in case any defendant sets up an affirmative cause of action, and demands relief which shall affect the title to real estate, may, at the time of filing such answer, or any time afterwards, file with the clerk or register of deeds of each county in which the said real estate thus to be affected, or any part thereof, may be situated, a notice of the pendency of such action, containing the names of the parties, the object of the action, and a description of the property in such county sought to be affected thereby. If the action be for a foreclosure of a mortgage, such notice must contain the date of the mortgage, the parties thereto, and the time and place of recording the same. The clerk or register of deeds of such county shall **record** notice thus filed and enter the same upon the numerical index of all lands, any part of which is included in the description in said notice, for which he shall be entitled to receive the sum of fifty (50) cents, to be paid by the person filing such notice, and which shall be taxed as a part of the costs in said action. From the time of filing such notice shall the pendency of such action be constructive notice to any purchaser or incumbrancer to be affected thereby, and every person whose conveyance or incumbrance is subsequently executed or subsequently recorded shall be deemed to be a subsequent purchaser or incumbrancer, and shall be bound by all proceedings taken in said action after the filing of such notice to the same extent as if he were made a party to the action. The court in which said action was commenced may, at any time after the action shall be settled, discontinued, or abated, on an application of any person aggrieved, and on good cause shown, and on such notice as the court may determine, order said **notice** to be **canceled** by the clerk or register of deeds of any county in which said notice may have been filed or recorded. Such cancellation shall be made by an endorsement to that effect on the margin of the record, which shall refer to the order directing the same, for which the clerk shall be entitled to a fee of twenty-five (25) cents.

All after * added 1887, p. 643. Lien of attachment takes effect from date of levy, and a deed and mortgage made of the attached land *pendente lite*, are no cloud upon title of attachment creditor. 11, 343 (7 N. W., 537). Cited in 17, 482 (23 N. W., 358).

4624 (86). When any part of the **real property**, the subject-matter of an action, is situated **in** any **other** county or **counties** than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the clerk's office of such other county or counties before it shall operate therein as a **notice** so as to charge third persons, as provided in the preceding section. It shall operate as such notice without record in the county where it is rendered, but this section shall not apply to actions or proceedings under any statute now in force which does not require such record.

Secs. 4625 and 4626. "An act in relation to service of process in certain actions concerning real estate." 1877, p. 17. In force June 1.

4625. That it shall be lawful for any person, or corporation, owning or claiming any interest in or lien upon any real estate lying within this state, to make and file in the office of the county clerk of the county in which such real estate is situated an appointment, in writing, of some person, who shall be a **resident** of the county in which said lands lie, **upon whom process may be** sued [**served**], in any suit, action, or proceeding, concerning or affecting such real estate, to which such owner or claimant shall be made a party. Such **appointment** shall be acknowledged in the manner provided by law for the acknowledgment of deeds. From and after the filing of such appointment as herein provided, service of any writ, summons, order, or notice, in any suit, action, or proceeding concerning or affecting such real estate shall be made upon the person so appointed and designated in such manner as may be provided by law for the service of process upon persons found in this state, and shall be held and taken to be a valid and effectual service upon such owner or claimant. A copy of such appointment, or of the record thereof, duly certified by the said clerk, shall be deemed sufficient evidence thereof. And no service made by publication shall be valid in respect to any such owner or claimant, who shall have filed an appointment under the provisions of this act; *Provided*, That such appointment may be at any time revoked by such owner or claimant, but such revocation shall be in writing, duly acknowledged, and filed and recorded in the office of the county clerk in which the appointment shall have been filed and recorded, but such revocation shall not affect any suit or proceedings commenced before the same shall have been recorded; *And provided further*, That this act shall in nowise affect any action or proceeding which shall have been commenced before the passage hereof, in which service of process shall have been made in accordance with the law in force at the time of its commencement.

4626. That the county **clerk** of each county shall keep a book in which he shall **record** such appointments as shall be filed under the provisions of this act and any revocation thereof, and shall be entitled to demand and receive therefor a fee of seventy-five cents, and ten cents for each folio of one hundred words contained therein.

TITLE VI.—JOINDER IN ACTIONS.

4627 (87). The **plaintiff** may **unite** several **causes** of action in the same petition, whether they be such as have heretofore been denominated legal, or equitable, or both, **when** they are included in either of the following classes: *First*—The same transaction or transactions connected with the same subject of action. *Second*—Contracts, express or implied. *Third*—Injuries, with or without force, to person and property, or either. *Fourth*—Injuries to character. *Fifth*—Claims to recover the possession of personal property, with or without damages for the withholding thereof. *Sixth*—Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same. *Seventh*—Claims against a trustee by virtue of a contract, or by operation of law.

Legal and equitable causes of action may be included in one suit, but they must be actual, not prospective. **9,** 482 (4 N. W., 67); **4,** 585. Action to recover possession of land may be joined with one to recover rents and profits. **12,** 543 (11 N. W., 851). Correction of and recovery on bond in same action. **4,** 566. Transactions connected with the same subject-matter may be united in one petition. Also such injuries may be united in the same action, whether with or without force, and may also be united, not only with each other, but with injuries to the person. **21,** 170 (31 N. W., 656). One action may be maintained upon two separate official bonds, when they were both given by the same officer for the same bond. **10,** 408 (6 N. W., 472).

4628 (88). The causes of action so united must affect all the **parties** to the action, and not require different **places of trial.**

TITLE VII.—PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.—PLEADINGS IN GENERAL.

4629 (89). The **pleadings** are the written statements by the parties of the facts constituting their respective claims and defenses.

Pleading should be made to conform to provisions of title 7; refusal of party to reform a pleadings drawn in common law form, sufficient ground for striking it from the files. **24,** 491-2 (39 N. W., 419). In construing a pleading, the rule is that it must be taken most strongly against the pleader. **13,** 294 (13 N. W., 405). A fact necessarily inferable from the pleadings need not be proved. **13,** 342 (14 N. W., 418). Finding of facts and judgment must conform to, and be supported by, the allegations of the pleadings on which they are based. **12,** 371 (11 N. W., 431). It is presumed that a pleader has stated his case as favorably to himself as the facts warranted. **14,** 849 (16 N. W., 911). Where pleadings are all lost and none substituted, it is error for the court to render judgment. **11,** 469 (9 N. W., 647).

4630 (90). **[Sufficiency, how determined.]**—The rules of pleading heretofore existing in civil actions are abolished, and hereafter the forms of pleading in civil actions in courts of record, and the rules by which their sufficiency may be determined are those prescribed by this code.

4631 (91). **[Pleadings allowed.]**—The only pleadings allowed are: *First*—The petition by the plaintiff. *Second*—The answer or demurrer by the defendant. *Third*—The demurrer or reply by the plaintiff. *Fourth*—The demurrer to the reply by the defendant.

CHAPTER II.—THE PETITION.

4632 (92). **[Contents.]**—The petition must contain: *First*—The name of the court and county in which the action is brought, and the names of the parties, plaintiff and defendant. *Second*—A statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition. *Third*—A demand of the relief to which the party supposes himself entitled. If the recovery of money be demanded the amount thereof shall be stated; and if interest thereon be claimed the time from which interest is to be computed shall also be stated.

The issue of fact raised by the pleading is the only subject on which the jury have to pass except in an action of replevin, when they shall inquire into the rights of property and right of possession. **5,** 37. Title of cause is part of petition. Sufficient in body of petition to say "plaintiff" and "defendant." **11,** 238 (9 N. W., 91). Petition should state all the facts essential to the existence of a cause of action, and not simply conclusions or ultimate facts, which should be left to inference from primary facts properly alleged. **12,** 411 (11 N. W., 861). Where parties are designated as defendants in the title, the addition of the word "partners" will not restrict the action to one against the firm alone. **13,** 411 (14 N. W., 141). Copy of instrument sued upon should be attached to petition. **8,** 214. Petition must show interest of plaintiff. **8,** 468. When a material allegation is omitted from the pleadings the presumption is that it does not exist. **7,** 493. Prayer may be resorted to where there is doubt, as whether pleader relies on a legal or equitable cause of action. **24,** 316–17 (38 N. W., 797). Where all relief prayed for cannot be granted the court should grant such relief as the facts will warrant, whether it be legal or equitable. **12,** 128, 132 (10 N. W., 549). Motion to strike from files proper only where there is a defect in matters of form required by statute. **24,** 381 (38 N. W., 863). Defective petition not amendable after verdict. Objection to admission of evidence on the ground that petition does not state a cause of action may be taken at any time during the trial. **7,** 318. Petition on contract must aver performance of all conditions precedent or show a waiver. **5,** 65; **5,** 82. In petition for rescission of contract on account of fraud, particular circumstances must be set out. **6,** 135. Petition which seeks to establish a trust should set out all the facts and circumstances from which a trust would result. **3,** 61. In an action in the nature of a creditor's bill brought on a foreign judgment, petition should show that defendant had no property in the state subject to attachment or garnishment. **21,** 678 (33 N. W., 478). A petition which alleges that defendant is indebted to the plaintiff for a specific sum then due and payable, for goods, etc., sold and delivered, is good. **17,** 105 (22 N. W., 225). An allegation in a petition that a bill was unjust, and was audited and allowed through fraudulent and undue means, too general. **6,** 201. "Weisz & Mall Co., a partnership doing business in the state of Iowa," is not a sufficient compliance with the first clause. **28,** 566 (44 N. W., 470). In replevin, petition should state that plaintiff is owner or has special property therein, that he is entitled to the immediate possession of the same, and that the defendant wrongfully detains the same. Defective petition cured where averment is set up in the answer. **6,** 272. Averment of petition in replevin that owner has a special interest in the goods and entitled to the immediate possession thereof, mere proposition of law. **7,** 320. In an action for damages on attachment bond, petition should show that the order was wrongfully obtained. If it fails to do this it is fatally defective. **5,** 471. In action for breach of covenants of warranty, necessary to allege eviction by a paramount title. **3,** 85. Mere general averment of fraud and misrepresentation insufficient. **24,** 817 (40 N. W., 415). Petition though indefinitely stating a conclusion sufficient after verdict. **27,** 847 (44 N. W., 37). Petition in action for conspiracy held sufficient. **27,** 358 (43 N. W., 133). See **5,** 331.

4633 (93). Where the petition contains more than one cause of action, **each** shall be **separately stated** and numbered.

Not void if not numbered. **28,** 692 (45 N. W., 164). Where second and third counts of petition conflict with first, proper motion is to strike out inconsistent matter, or to require plaintiff to elect. **24,** 315 (38 N. W., 797). Petition not stating cause of action separately must be changed if defendant object. **24,** 823 (40 N. W., 411). Demurrer to pleading admits whatever is set up in such pleading. **5,** 431.

CHAPTER III.—DEMURRER.

4634 (94). The **defendant** may **demur** to the petition only **when** it appears on its face Either—*First*—That the court has no jurisdiction of the person of the defendant, or the subject of the action. *Second*—That the plaintiff has not legal capacity to sue. *Third*—That there is another action pending between the same parties for the same cause. *Fourth*—That there is a defect of parties plaintiff or defendant. *Fifth*—That several causes of action are improperly joined. *Sixth*—That the petition does not state facts sufficient to constitute a cause of action.

Petition does not state facts sufficient to constitute a cause of action. **9,** 357 (2 N. W., 875). Where petition is demurred to on the ground only that it does not state facts sufficent to constitute a cause of action no other ground will be considered. **6,** 84. If ground stated in demurrer be not provided in the code, will be regarded as a general demurrer. **3,** 52. A general demurrer raises questions of statute of limitations. **22,** 226 (34 N. W., 625); **16,** 4 (19 N. W., 783). Statute of limitations cannot be interposed by a general demurrer unless petition shows ouster by reason of breach of covenants of warranty. **3,** 866. That there are too many plaintiffs or defendants joined in a petition is not ground for demurrer under the code. **19,** 739 (28 N. W., 280). Objection that plaintiffs have not legal capacity to sue should be made on that ground, and cannot be taken by general demurrer. Court will not look beyond pleading demurred to; so held on demurrer to an amended petition. **12,** 320 (11 N. W., 302). A demurrer for defect of parties defendant will lie only where it appears on the face of the petition that necessary parties defendant are wanting. A demurrer for misjoinder of causes of action will lie only where the joinder itself is forbidden, such as uniting an action in tort with one upon contract. **11,** 397 (9 N. W., 475). Demurrer lies to statement of facts and not to prayer for relief. When several defendants join in a demurrer to a petition which is good as to one, demurrer will be overruled. **11,** 194 (8 N. W., 389). If pleading is correct in substance, not in form, proper remedy by motion. Party waives his right to error if he answers after demurrer it overruled. **7,** 240. If an answer to a petition will put the plaintiff upon the proof of any one of the material allegations of his petition, it is good against a general demurrer. **12,** 596 (12 N. W., 108). Demurrer to petition because no copy of contract is attached will not be sustained. **4,** 263. Good on ground that petition does not show personal property within jurisdiction of treasurer of county. **8,** 334. Petition alleging that journeymen tailors had formed a conspiracy, had returned unfinished garments, that said garments were worthless, that plaintiff was unable to get other tailors to finish the work, and that he was damaged in the amount of $371, held that petition stated a cause of action. **9,** 393 (2 N. W., 739). Petition for correction of official bond and to obtain a money judgment, not demurrable for misjoinder of cause of action. **4,** 566. Joint demurrer will be overruled if petition contains a cause of action against one of those joining in it. **9,** 515 (4 N. W., 244). Demurrer will not lie when it is necessary to look beyond the pleadings against which it is directed. **5,** 502. Demurrer to answer to petition foreclosing mortgage which pleads extension of time of payment, held that demurrer admitted the extension and hence no cause of action. **22,** 474 (35 N. W., 225). Party demurring admits facts to which he demurs. **3,** 322. Remedy not appeal, but by petition in error. **4,** 567. One who stands on demurrer not allowed to answer to merits of the case afterwards. **8,** 502. Demurrer overruled and defendant answers, waives his exception to ruling. **2,** 308. Demurrer waived by going to trial on merits. **3,** 223. Objections to overruling of demurrer waived by pleading over. **27,** 70 (42 N. W., 894). See **4,** 138; **9,** 81 (2 N. W., 346); **17,** 74 (22 N. W., 232).

4635 (95). The **demurrer** shall **specify** distinctly the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only that the petition does not state facts sufficient to constitute a cause of action.

Should state grounds distinctly, but where party proceeds to hearing of such demurrer without objection it will be treated as a general demurrer. **4,** 430.

4636 (96). When any of the **defects** enumerated in section ninety-four do not appear upon the face of the petition, the objection may be taken by answer; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have **waived** the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action.

Defect of misjoinder of causes of action must be taken advantage of by demurrer or answer, or it is waived. **10,** 56 (4 N. W., 411). Failure to allege *exclusive* adverse possession will be considered waived after judgment. **27,** 62 (42 N. W., 915).

4637 (97). When a demurrer is sustained on the ground of **misjoinder** of several causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs in its discretion, to file **several petitions,** each including such of said causes of action as might have been joined; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service.

Where cause of action in first count of petition is equitable, and that in second is legal, it is not a misjoinder. **24,** 316 (38 N. W., 797). Only those wrongfully sued can take advantage of a misjoinder. **9,** 310 (2 N. W., 715).

4638 (98). The defendant may **demur to one** or more of the several causes of action stated in the petition, and **answer** as to the **residue.**

CHAPTER IV.—ANSWER.

4639 (99). The **answer** shall **contain:** *First*—A general or specific denial of each material allegation of the petition controverted by the defendant. *Second*—A statement of any new matter constituting a defense, counter-claim, or set-off, in ordinary and concise language, and without repetition.

Where a material fact is omitted it is presumed to not exist. **17,** 511 (23 N. W., 559–562). Answer waives error in overruling demurrer. **22,** 360 (35 N. W., 181). That petition does not state a cause of action is not waived by answer. **17,** 511 (23 N. W., 559–562). Denial of each allegation of petition good. **17,** 247 (22 N. W., 424). Every defense must be set up in an answer. **5,** 362. Taking leave to answer waives objections to petition. **8,** 204. Former dismissal must be plead. **6,** 505. In replevin a general denial puts in issue every allegation of the petition. **9,** 486 (4 N. W., 83). A motion to make an answer more definite and certain in an action in replevin will not be entertained. General denial sufficient. **21,** 76 (31 N. W., 241). A plea of general denial will entitle defendant to such damages as he may prove. **5,** 102; **5,** 36. An answer in which defendant "says, that he never signed the note, etc., nor is his signature thereto attached genuine, but that if he did sign it, or if his signature thereto is genuine, then it was procured through the fraud, circumvention," etc., is a substantial admission of the signing of the note. **12,** 434 (11 N. W., 872). Where answer filed in terms demands affirmative relief, parties to the suit need not be notified. **28,** 675 (44 N. W., 873). Where bonds sued upon are claimed to be illegal the facts constituting such illegality must be stated in the answer. **13,** 13 (12 N. W., 832). Former recovery must be plead. **6,** 440. Estoppel must be plead. **8,** 142. New matter must be pleaded. **7,** 34. Answer that note was given for an illegal consideration not good defense in hands of innocent purchaser. **9,** 35 (1 N. W., 893). Existence of corporation is not put in issue by a general denial. **13,** 46 (13 N. W., 13). General denial does not put in issue the corporate existence of a corporation or its power to sue. **8,** 455. Overruling of motion to make answer more specific, not reversible error. **27,** 384–5 (43 N. W., 123); **27,** 881 (44 N. W., 41). See **28,** 610 (44 N. W., 469).

4640 (100). The defendant may set forth in his answer as **many grounds of defense,** counter-claim, and set-off as he may have. Each must be separately stated and numbered and they must refer in an intelligible manner to the cause of action which they are intended to answer.

Answer must contain every ground of defense, else not available. **5,** 362. Defendant is permitted to plead as many defenses as he may have if they are consistent with each other. **19,** 105 (26 N. W., 705). Cited, **12,** 218 (10 N. W., 709).

4641 (101). The **counter-claim** mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

A counter-claim is an independent cause of action in which the defendant becomes an actor in respect to his claim, and it is required to be stated with the same distinctness and certainty as in a petition. **12,** 225 (10 N. W., 711). A claim arising subsequent to the commencement of the suit is not a proper counter-claim. **18,** 172 (24 N. W., 734). Answer setting up counter-claim held to constitute a plea of confession and avoidance. **27,** 163 (42 N. W., 1054). Mortgagor entitled to counter-claim for waste by mortgagee in possession. **2,** 13. Money paid for liquors sold contrary to law may be recovered back without demand, but is a set-off rather than a counter-claim. **16,** 480 (20 N. W., 385); **15,** 175 (18 N. W., 64).

4642 (102). If the defendant **omit** to set up the **counter-claim** or set-off, he cannot recover **costs** against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in sections one hundred and three and one hundred and twenty-six.

4643 (103). When it appears that a **new party** is necessary to final decision upon the counter-claim, the court may either permit the new party to be made, by a summons, to reply to the counter-claim, or may direct the counter-claim to be stricken out of the answer, and made the subject of a separate action.

4644 (104). A **set-off** can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of the court.

A set-off may be pleaded in all actions founded upon contract whether the damages are liquidated or not. **12,** 220 (10 N. W., 709). Does not apply to mutual judgments, nor for unliquidated damages. **3,** 167-8. Only a *bona fide* claim belonging to defendant when suit commenced is proper as a set-off. **15,** 674 (19 N. W., 473). Delinquent tax not the subject of set-off. **9,** 347 (2 N. W., 870.)

4645 (105). When it appears that a **new party** is necessary to the final decision upon the set-off, the court shall permit the new party to be made, if it also appear that owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim unless permitted to use it as a set-off.

4646 (106.) When cross-**demands** have existed between persons under such circusmtances that if one had brought an action against the other a counter-claim or set-off could have been set up, neither can be deprived of the benefit thereof by the **assignment** or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

See **4,** 194.

4647 (107). The **guardian** of an infant or person of an unsound mind, or **attorney** for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant.

CHAPTER V.—REPLY.

Sec. 108 repealed. G. S., p. 713.

4648 (109). The **plaintiff** may demur to one or more of the defenses set up in the answer, stating in his **demurrer** the grounds thereof, and where the answer contains new matter the plaintiff may **reply** to such new matter denying generally or specifically each allegation controverted by him; and he may allege, in ordinary and concise language, and without repetition, any new matter not inconsistent with the petition, constituting a defense to such new matter in the answer.

Amended 1873; G. S., p. 541. Reply must be made to all the material allegations in the answer or they will be taken as true. **5,** 488; **6,** 219; **8,** 78. A reply denying averments of answer inconsistent with petition is bad. **17,** 252 (22 N. W., 690). Judgment on demurrer should be against party whose pleading was first defective in substance. 27, 251 (42 N. W., 1039). No reply to answer or new matter necessary unless it constitutes a counter-claim or set-off. 2, 287. Reply may be filed after verdict, where both parties have proceeded on the theory that answer is denied. 29, 249 (45 N. W., 619).

CHAPTER VI.—GENERAL RULES OF PLEADING.

4649 (110). The answer or demurrer of the defendant shall be filed on or before the third Monday, and the reply or demurrer of the plaintiff on or before the fifth Monday, after the return day of the summons or service by publication.

All parties are bound to take notice of pleadings filed in time, but are only bound by actual knowledge or notice of those filed out of time. 23, 704 (37 N. W., 628).

4650 (111). The court, or the judge thereof in vacation, for good cause shown, may **extend** the **time** for filing an answer or reply upon such terms as may be just.

4651 (112). Every **pleading** in a court of record must be **subscribed** by the party or his attorney.

4652 (113). Every **pleading** of fact must be **verified** by the affidavit of the party, his agent or attorney. A pleading verified as herein required, shall not be used against a party in any criminal prosecution or action or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party.

Want of verification not jurisdictional. 8, 213. Failure of may be cured by amendment. 2, 135. Want of verification no ground for dismissing action. 6, 435. Petition in error need not be verified. 9, 504 (4 N. W., 237). Objections to verification waived if not made before objections to matter in petition. 24, 382 (38 N. W., 863). Affidavit signed "Frank Delone, per P. B. Murphy, Agt.," sufficient. 24, 382 (38 N. W., 863).

4653 (114). The **verification** mentioned in the last section shall **not** be **required** to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned; nor **in** any **case** where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution.

4654 (115). If there be **several** persons united in interest and **pleading together**, the **affidavit** may be made by any one of such parties.

4655 (116). The **affidavit** shall be sufficient if it **state** that the affiant believes the facts stated in the pleading to be true.

4656 (117). In all cases where the party pleading is a **non-resident** of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an **affidavit** made **before filing** the pleading, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. Such affidavit shall be filed with the pleading intended to be verified thereby.

4657 (118). The **affidavit** verifying pleadings may be made before any notary public or other officer authorized to administer oaths, and must be signed by the party making the same; and the officer **before whom** the same was taken shall certify that it was **sworn to** or affirmed before him and signed in his presence. The certificate of such officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer, and nothing herein shall be construed to prohibit an attorney at law, who is a notary public, from swearing a client to any pleading or other paper or affidavit in any proceeding in any of the courts of this state.

Amended 1887, p. 646.

4658 (119). The **verification** of a pleading does **not apply to** the **amount** claimed, except in actions founded on contracts, express or implied, for the payment of money only.

4659 (120). When the affidavit is made **by** the **agent** or **attorney** it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney only: *First*—When the facts are within the personal knowledge of the agent or attorney. *Second*—When the plaintiff is an infant, or of unsound mind, or imprisoned. *Third*—When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the possession of the agent or attorney. *Fourth*—When the party is not a resident of, or is absent from the county. *Fifth*—When the party is a corporation, in which case it may be made by the attorney, or any officer or agent upon whom a summons could be legally served.

Fifth clause added 1875, p. 34. Attorney may verify. **3,** 116.

4660 (121). In the construction of any pleading, for the purpose of determining its effects, its allegations shall be **liberally construed,** with a view to substantial justice between the parties.

2, 267; **26,** 324 (41 N. W., 1119); **27,** 70 (42 N. W., 894). Description of property in action of replevin. **29,** 221 (45 N. W., 619).

Secs. 122 and 123 repealed. G. S., 713.

4661 (124). If the **action,** counter-claim, or set-off be founded on an account, or **on** a note, bill, or other **written instrument,** as evidence of indebtedness, a **copy** thereof must be attached to and **filed** with the pleading, except in actions founded upon notes issued to circulate as money. If not so attached and filed, the **reason** thereof must be shown in the pleading.

Copies should be attached. **8,** 214. Failure to attach a copy of the instrument is not ground of demurrer, but of motion. **10,** 527 (7 N. W., 276). Omission to attach copy of instrument sued upon not ground to dissolve attachment. Can be taken advantage of only by motion. **9,** 235 (2 N. W., 366).

4662 (125). If redundant, scandalous, or irrelevant **matter** be inserted in any pleading, it may be **stricken out** on motion of the party prejudiced thereby. And when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by **amendment.**

Motion to make petition definite and certain comes too late after answer is filed. **12,** 85 (10 N. W., 552). Motion to make more definite will not be entertained after a demurrer has been overruled. **20,** 416 (30 N. W., 411). Matter not stricken out as irrelevant. **9,** 321 (2 N. W., 888); **2,** 67. Cited, **10,** 528 (7 N. W., 276); **28,** 691 (45 N. W., 164).

4663 (126). The court, at any time before the final submission of the cause, on motion of the defendant, may allow a **counter-claim or set-off,** set up in the answer, to be **withdrawn,** and the same may become the subject of another action. On motion of either party, to be made at the time such counter-claim or set-off is withdrawn, an action on the same shall be docketed and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, it may afterwards be commenced in the ordinary way.

4664 (127). In **pleading a judgment,** or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Court will take judicial notice that a circuit court is a court of general jurisdiction. **23,** 103 (36 N. W., 356); **24,** 188 (38 N. W., 820). But not so of a superior court. **18,** 167 (24 N. W., 734).

4665 (128). In **pleading** the performance of **conditions precedent** in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish on the trial the facts showing such performance.

Cited, **25,** 509 (41 N. W., 406).

4666 (129). In an **action,** counter-claim, or set-off, founded **upon** an account, promissory note, bill of exchange, or other **instrument,** for the unconditional payment of money only, it shall be sufficient for the party to give a copy of the account or instrument, with all credits and endorsements thereon, and to state that there is due to him on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties in the action, it shall be necessary to state also the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

This provision is not mandatory; any proper statement of cause of action is good. **15,** 120 (17 N. W. 359). The last clause would seem to require a copy of the endorsement to be in the petition. **11,** 456 (9 N. W., 652). It must be alleged that sum claimed is due on note in controversy. **12,** 279 (11 N. W., 306). Petition must allege that there is something due on the instrument sued on. **10,** 269 (4 N. W., 981). When negotiable instrument is lost after it becomes due, a recovery may be had thereon in a court of law. **14,** 512 (16 N. W., 839). Petition held sufficient. **11,** 237 (9 N. W., 91).

4667 (130). In **pleading a private statute,** or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

4668 (131). In an action for **libel** or **slander** it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be denied, the plaintiff must prove on the trial the facts, showing that the defamatory matter was published or spoken of him.

Words held libelous and actionable *per se.* **11,** 280 (9 N. W., 43).

4669 (132). In the actions mentioned in the last section the defendant may allege the **truth** of the matter charged as defamatory, and may prove the same, and any **mitigating circumstances** to reduce the amount of damages, or he may prove either.

Where the issue is that of malice plaintiff has the opening and closing. **15,** 505 (19 N. W., 706).

4670 (133). In an action for the recovery of **real** property, it shall be **described** with sufficient certainty to enable an officer holding an execution to identify it.

4671 (134). Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in the reply shall be deemed controverted by the adverse party, as upon a direct denial or avoidance. Allegations of value or of amount of damage shall not be considered as true by failure to controvert them.

Amended 1873; G. S., 545. A denial must be direct and unambiguous. **4,** 523. The burden of proving new matter, such as payment set up in the reply, is on the plaintiff. **10,** 7 (4 N. W., 361). New matter set up by defendant in replevin taken as true. **29,** 656 (46 N. W., 47). Burden of proving new matter alleged in the answer is on defendant. **11,** 442 (9 N. W., 569). Where a cause is submitted on the pleadings, only such matters of defense in the answer as are admitted, or not denied in the reply, are to be considered as established. **14,** 246 (15 N. W., 212); **11,** 397 (9 N. W., 475).

4672 (135). A **material allegation** in a pleading **is** one essential to the claim or defense, which could not be stricken from the pleading without leaving it insufficient.

Failure to plead a material fact raises a presumption that it does not exist. **27,** 404 (43 N. W., 178).

4673 (136). Neither **presumptions** of law, nor **matters of** which **judicial notice** is taken, need be stated in the pleading.

4674 (137). If an **original pleading** be **lost,** or withheld by any person, the court may allow a **copy** thereof to be **substituted.**

See note to section 1, *ante,* citing **11,** 469.

CHAPTER VII.—MISTAKES IN PLEADINGS, AND AMENDMENTS.

4675 (138). No **variance** between the allegation in a pleading and the proof, is to be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as may be just.

Description in insurance policy locating property in N. W., instead of S. E. quarter, as proof shows it to be, not material. **27,** 540-1 (43 N. W., 340). Variances in copy of bond, held, not fatal. **12,** 99 (10 N. W., 577).

4676 (139). Whenever the **variance** is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, and may order an immediate **amendment** without costs.

Pleadings may be amended to conform to facts proven. **7,** 58.

4677 (140). When, however, the **allegation** of the claim or defense to which the proof is directed is **unproved,** not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

4678 (141). The plaintiff may **amend** his **petition** without leave, at any time **before** the **answer** is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney, and the defendant shall have the same time to answer or demur thereto as to the original petition.

4679 (142). At any time within ten days **after** a **demurrer** is filed, the adverse party **may amend,** of course, on payment of costs since filing the defective pleading. **Notice** of filing an amended pleading shall be forthwith served upon the other party, who shall have the same time thereafter to answer or reply thereto, as to an original pleading.

4680 (143). Upon a **demurrer** being **overruled,** the party who demurred may **answer** or **reply,** if the court be satisfied that he has a meritorious claim or defense, and did not demur for delay.

4681 (144). The court may, either before or after judgment, **in furtherance of justice,** and on such terms as may be proper, amend any pleading, process, or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by asserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. And whenever any proceeding taken by a party fails to conform in any respect to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment.

Original section allowed amendment only "before judgment;" amended 1875, p. 35. Has reference solely to amendment of pleadings. **14,** 429 (16 N. W., 434). This section confers upon the court an almost unlimited power of amendment "in furtherance of justice." **12,** 393 (10 N. W., 705). Where the ends of justice seem to demand it, leave will be given in the supreme court to amend a petition so as to fully state the cause of action. **14,** 490 (16 N. W., 911). Amendment may be made after trial. **8,** 318. Error to refuse amendment in furtherance of justice. **9,** 5 (1 N. W., 980). Permitting amendments to be filed rests in discretion of court, and may be conditioned on taxation of costs. **29,** 432 (45 N. W., 471). A petition in ejectment may be amended to one in equity; so long as the identity of the cause of action is preserved, the form of the action is not material. **19,** 33 (26 N. W., 614). Supersedeas bond is a proceeding and can be amended. **19,** 220 (27 N. W., 109). Appeal bond may be amended. **3,** 122. Stay bond is amendable. **17,** 201 (22 N. W., 455). Defective verification may be amended. **2,** 136; **3,** 136. Indiscretion of court. **3,** 95. Affidavit in replevin may be amended. **13,** 205 (13 N. W., 176). Officer may amend his return to conform to facts though ten years have elapsed. **20,** 350 (30 N. W., 274). Allowed of petition which in describing land makes whole amount five acres instead of two hundred and forty as intended. **27,** 872 (44 N. W., 42). In suit against partnership it is learned during the trial that transaction was with an individual of the firm, amendment allowed. **6,** 495. A pleading can be used as evidence, when an amended pleading is filed if it is at variance with the original. **19,** 107 (26 N. W., 621). See **6,** 506; **20,** 548 (31 N. W., 75); **29,** 498 (46 N. W., 39).

4682 (145). The court in every stage of an action must **disregard** any **error** or defect in the pleadings or proceedings **which does not affect** the **substantial rights** of the adverse party; and no judgment shall be reversed or **affected** by reason of such error or defect.

Description in replevin affidavit as "seven head of horses," etc., and in amended petition as "three mares," "three horses," and "one colt," no variance. **27,** 569 (43 N. W., 357). Cited **13,** 32 (12 N. W., 811); **21,** 610 (33 N. W., 241).

4683 (146). If the **demurrer** be **sustained,** the adverse party may amend, if the defect can be remedied by way of **amendment,** with or without costs, as the court in its discretion shall direct.

4684 (147). When either party shall **amend** any **pleading** or proceeding, and the court shall be satisfied, by affidavit, or otherwise, that the adverse party could not be ready for trial in consequence thereof, a **continuance** may be granted to some day in term, or to another term of the court.

Counter-affidavit not proper. Affidavit that prisoner was informed, etc., not good. **6,** 338.

4685 (148). When the plaintiff shall be ignorant of the **name of a defendant,** such defendant may be designated in any pleading or proceeding by any name and description, and when his true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff in such case must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words "real name **unknown,**" and a copy thereof must be served personally upon the defendant.

4686 (149). Either party may be allowed, on notice, and on such terms as to costs as the court may prescribe, to file a **supplemental petition, answer,** or **reply,** alleging facts material to the case, occurring after the former petition, answer, or reply.

Cited, **21,** 313 (31 N. W., 918); **21,** 610 (33 N. W., 241); **24,** 655 (39 N. W., 835).

4687 (150). Whenever two or more **actions** are pending in the same court which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be **consolidated,** and if no such cause be shown, the said several actions shall be consolidated.

Not error if plaintiff fails to consolidate his causes of action. **9,** 112 (2 N. W., 365).

4188 (151). The **order for consolididation** may be made by the court or by a judge thereof in vacation.

TITLE VIII.—Provisional Remedies.

CHAPTER I.—ARREST AND BAIL.

Chapter I, secs. 152 to 180, repealed 1887, p. 654.

CHAPTER II.—REPLEVIN OF PROPERTY.

4689 (181). The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the suit, or any time before answer, claim the immediate **delivery of** such **property** as provided in this chapter.

Gist of action is the unlawful detention. **6,** 272. Question is right of property at commencement of action. **27,** 247 (42 N. W., 1034). Replevin will lie to recover possession of buildings erected on a lot by party claiming title thereto, who, by judicial determination, has been evicted therefrom, if not affixed to the soil, though another did afterwards affix them to the soil. **1,** 438. Replevin will not lie to oust a tenant from the occupancy of a building. **14,** 409 (16 N.

W., 832). Demand not necessary. **2,** 253. Where no bill of particulars was filed in justice's court, no question of departure can be raised in district court on appeal. **14,** 48 (14 N. W., 656); **27,** 222-3 (42 N. W., 1028); **29,** 565 (45 N. W., 927).

4690 (182). An **order for the delivery** of personal property to the plaintiff shall be made by the clerk of the court in which the action is brought, when there shall be filed in his office an **affidavit** of the plaintiff, his agent, or attorney **showing:** *First*—A description of the property claimed. *Second*—That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the same. *Third*—That the property is wrongfully detained by the defendant. *Fourth*—That it was not taken in execution on any order or judgment against said plaintiff; or for the payment of any fine, tax, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against him; **Provided,* That such affidavit may omit the first and last clause of this subdivision, and in lieu thereof show that the property was taken in execution on a judgment or order, other than an order of delivery in replevin, and that the same is exempt from such execution or attachment under the laws of this state; *And provided further,* That the provisions of this act shall extend to and apply as well to proceedings in replevin had before justices of the peace.

Amended and all after * added 1877, p. 9. Affidavit is a prerequisite in all cases. **17,** 488 (23 N. W., 344). Affidavit in replevin may be amended. **13,** 205 (13 N. W., 176). And see **13,** 279 (13 N. W., 403). Even after judgment. **7,** 53. Petition verified on mere belief will not take the place of affidavit; but court may permit filing of amended affidavit relating back to commencement of action. **29,** 224 (45 N. W., 622). Description in affidavit as "seven head of horses," etc., and in amended petition as "three mares," "three horses," and "one colt," no variance. **27,** 569-70 (43 N. W., 357). Plaintiff must have such interest as shall entitle him to the immediate possession of the property. **7,** 27. As to special ownership. **20,** 298 (30 N. W., 64). Not necessary that petition should contain all averments of section. Sufficient if petitioner states that he is the owner of and entitled to the immediate possession and that said goods are unlawfully detained. **21,** 157 (31 N. W., 491). Answer that defendant does not unlawfully detain the said goods and chattels of the said plaintiff puts in issue right of property and right of possession. **7,** 293.

4691 (183). The **order** for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It **shall state** the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

4692 (184). The **return day for** the **order** of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

When writ is returnable on Sunday or holiday, is not void but returnable the following day. **23,** 735 (37 N. W., 637).

4693 (185). The **sheriff** shall **execute** the **order** by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence.

Failure to deliver copy of order to defendant cannot be taken advantage of after judgment. **6,** 472. Writ of replevin cannot be served on Sunday. **16,** 653 (21 N. W., 406).

4694 (186). The sheriff, or other officer, shall not deliver to the **plaintiff,** his agent or attorney, the property so taken, until there has been executed, by one or more sufficient sureties of the plaintiff, a written **undertaking** to the defendant in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him, *and return the property to the defendant, in case judgment for a return of such property is rendered against him.* The undertaking shall be returned with the order.

* to * inserted 1873; G. S., p. 553. Surety bound with principal. **7,** 294. One who has given bond and received property cannot refuse to prosecute action and enjoin others from doing so. **24,** 578 (39 N. W., 600). Bond in another action properly admitted in evidence. **27,** 222 (42 N. W., 1028). Where mortgagee replevies goods from sheriff, who holds them under an order of attachment against the mortgagor, the sheriff's measure of damages is the amount called for by his writ, when value of property equals or exceeds that sum. **12,** 374 (11 N. W., 462). Judgment for mortgagee in replevin by mortgagor, not a bar to action by latter for accounting. **29,** 455 (45 N. W., 617). Measure of damages for wrongful detention of stock of goods by sheriff not merely net income of store at time; all other elements may be considered. **27,** 94 (42 N. W., 906). Claim for damages may be increased by amendment on appeal to district court in proper case. **12,** 392 (10 N. W., 705). Not necessary that the court shall find the value of property when possession sued for. **21,** 711 (33 N. W., 254); **22,** 89 (34 N. W., 76). Verdict should respond to the issue made by the pleadings. **9,** 30 (1 N. W., 975). See **25,** 438 (41 N. W., 284).

4695 (187). For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof.

Appraisal not admissible as evidence. **27,** 223 (42 N. W., 1028).

4696 (188). If the undertaking, required by section one hundred and eighty-six, be not given within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he takes insufficient security, he shall be liable to the defendant in damages.

4697 (189). The defendant may, within twenty-four hours from the time the undertaking referred to in the preceding section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided or until they justify. The property shall be delivered to the plaintiff when the undertaking required by section one hundred and eighty-six has been given.

4698 (190). **[Proceedings in action—Jury—Findings.]**—If the property has been delivered to the plaintiff, and judgment be rendered against him on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

Omission of word possession from verdict not fatal under facts stated. **24,** 385 (38 N. W., 863). Cannot be changed into a suit in equity. **20,** 299 (30 N. W., 64). A general denial and claim of a return of the property is a sufficient answer. **17,** 520 (23 N. W., 519). Judgment should be in the alternative for return of property, or, in case a return cannot be had, for its value, unless it is shown by the record that a return could not be had. Attorneys cannot make an agreement contrary to the facts that will bind the sureties on replevin bond. **13,** 510 (14 N. W., 476).

4699 (191). In all cases, when the property has been delivered to the plaintiff, where the jury shall find upon issue joined for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall **assess** such **damages** as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

The damages of an officer acting lawfully are the value of his writs if not greater than the property. **17,** 399 (23 N. W., 1). Where property has been in any way restored to defendant during pendency of suit, he cannot maintain an action for its value. **29,** 783 (46 N. W., 211).

Sec. 4700 formed sec. 7 of act of 1873; G. S., p. 713. In force September 1.

4700. The **judgment** in the cases mentioned in sections one hundred and ninety, and one hundred and ninety-one, and in section one thousand and forty-one of said code, shall be **for a return of** the **property or** the value thereof in case a return cannot be had, or the value of the possession of the same, and for **damages** for withholding said property, and costs of suit.

The place where property is replevied is a suitable place to return it. Plaintiff is only required to return the property in the condition he found it. When portion of goods cannot be returned, and their value can be definitely ascertained, such value in money may be tendered in their stead, together with the remaining goods. If defendant refuses to accept, and proceeds to collect judgment, he may be enjoined. **11,** 479 (9 N. W., 643). If return cannot be had, value of property the measure of damages. **19,** 583 (27 N. W., 646). Where the judgment was that defendants have a return of the property, and in case of a failure to return for money, and within the time plaintiff offered to return the property and defendant refused to accept it, held that an injunction would lie restraining the collection of the money on execution. **10,** 594 (7 N. W., 319). Defendant is only divested of his interest in the property by a final judgment. **17,** 701 (24 N. W., 425). Court has no discretion. **7,** 238. Cited, **12,** 392 (10 N. W., 705).

4701 (192). In all cases where the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of **damages** upon a judgment by default, they shall assess adequate damages to the plaintiff for the illegal detention of the property; for which, with costs of suit, the court shall render judgment for defendant.

Court may find damages. **6,** 473. Damages allowed only on return of property. **21,** 79 (31 N. W., 241). Not necessary to render judgment for possession. **27,** 576–7 (43 N. W., 357). Plaintiff must show special damage to himself distinct from that done the public at large before injunction will lie. **3,** 186. Measure of damages value of property and legal costs and charges in making collection **6,** 228. Defendant construed to mean plaintiff. **20,** 300 (30 N. W., 64). Demand for return of property not necessary to maintain action of replevin. **1,** 200; **7,** 200.

4702 (193). When the **property** claimed has **not** been taken, or has been **returned** to the defendant by the sheriff for want of the undertaking required by section one hundred and eighty-six, the action may proceed as one for **damages** only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and eighty-six, the plaintiff shall pay all costs made by taking the same.

Judgment should be for damages only; not for return of property. **27,** 145 (42 N. W., 904). Measure of damages is value of property taken, with interest. **12,** 455 (11 N. W., 888). Damages may be recovered even where defendant parted with possession before commencement of suit. **29,** 301 (45 N. W., 462). Cited, **27,** 503 (43 N. W., 361).

Sec. 4703. "An act to amend the code of civil procedure in actions of replevin." 1875, p. 44. In force February 25.

4703. That whenever any **action** in replevin shall be **dismissed** by the court for irregularities or defects in the proceedings by the plaintiff, **judgment** may be given **in favor of** the **defendant** on proof of the value of the property and amount of damages.

4704 (194). An **order** may be directed **to** any other **county** than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

4705 (195). The sheriff or other officer, in the **execution of** the **order** of delivery, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

4706 (196). No suit shall be instituted on the undertaking given under section one hundred and eighty-six, before an execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

Suit on bond cannot be brought until execution against principal returned unsatisfied. **9,** 46 (2 N. W., 359). This is imperative and cannot be waived by the court. **25,** 276 (41 N. W., 147).

4707 (197). Any order for the delivery of property issued under section one hundred and eighty-two, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured.

CHAPTER III.—ATTACHMENT.

ARTICLE I.—GENERAL ATTACHMENTS.

Subdivision 1.—Grounds of Attachment.

4708 (198). The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated: *First*—When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this state: or, *Second*—Has absconded with the intent to defraud his creditors; or, *Third*—Has left the county of his residence to avoid the service of a summons; or, *Fourth*—So conceals himself that a summons cannot be served upon him; or, *Fifth*—Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or, *Sixth*—Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh*—Has property, or rights in action, which he conceals; or, *Eighth*—Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or, *Ninth*—Fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought. But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of the state, for any claim other than a debt or demand arising upon contract, judgment, or decree.

There are nine distinct grounds of attachment here, any one of which will support the action. and affidavit is not bad that states one as the eighth in exact language of statute. **18,** 170 (24 N. W., 734). Sufficient if in words of statute. **3,** 73. When all provisions of statute are complied with, court has jurisdiction. **11,** 127 (7 N. W., 533). Attachment is a proceeding ancillary to the main action in which allowed. **21,** 700 (33 N. W., 254). When affidavit is filed that defendant is a non-resident no summons need be issued. But in such case no judgment can be rendered for sale of attached property until notice is given to defendant by publication, and notice must contain description of property attached. **12,** 346 (11 N. W., 491–577). But see **15,** 371 (18 N. W., 81). Attachment lies not alone against property of one who has given an express promise, but also of one on whose part law implies a promise; e. g., one who has received another's money for the purpose of loaning it. **24,** 786 (40 N. W., 322). An affidavit for attachment stating "that the said claim in said action is for damages in not delivering goods purchased," does not show that the action is for a debt or demand arising upon contract, judgment, or decree, and does not authorize an attachment against a non-resident or foreign corporation. **14,** 460 (16 N. W., 765). Court should require a statement from applicant revealing fully grounds of apprehension. **6,** 529. When goods are found in the possession of a stranger who claims title, the party must both allege and prove not only issuing of attachment but every material fact and condition necessary to the regularity of its issue. **21,** 492 (32 N. W., 295). Mere insolvency not ground for attachment. **20,** 485 (30 N. W., 556). Cannot be maintained for a tort. **5,** 67. Cited, **27,** 411 (43 N. W., 179).

Subdivision 2.—How an Attachment is Obtained.

4709 (199). An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an **affidavit** of the plaintiff, his agent or attorney, **showing**: *First*—The nature of the plaintiff's claim. *Second*—That it is just. *Third*—The amount which the affiant believes the plaintiff ought to recover. *Fourth*—The existence of some one of the grounds for an attachment enumerated in the preceding section.

Sufficient if in words of the statute. **2,** 14. Affidavit held good. **17,** 105 (22 N. W., 225). Affidavit sufficient if it state nature of plaintiff's claim; reference may be had to petition for fuller statement. **24,** 787 (40 N. W., 322). An affidavit setting forth ground of attachment substantially in the words of the statute will sustain the attachment as long as it stands undenied; but when denied its truthfulness must be shown by proof of facts or the attachment will fail. **14,** 497 (16 N. W., 909). As to sufficency of affidavit by agent. **18,** 170 (24 N. W., 734). Affidavit need not allege that affiant is attorney or agent if clerk satisfied. **16,** 372 (20 N. W., 264). Affidavit need not state that there is property subject to levy in jurisdiction. **15,** 315 (18 N. W., 81). Want of venue curable by amendment. Omission of name in body of affidavit immaterial. **6,** 165. Where affidavit was sworn to before the clerk of the court in which action is pending, but the venue was omitted, it will be presumed that the clerk administered the oath in the proper county; this proceeding cannot be attacked collaterally but only in a direct proceeding. **2,** 156. Affidavit for attachment of real estate cures defects in affidavit for service by publication. **27,** 413 (43 N. W., 179). Cited, **22,** 580 (36 N. W., 113).

4710 (200). When the ground of the attachment is that the defendant is a foreign corporation, or a non-resident of the state, the order of attachment may be issued without an **undertaking.** In all other cases, the order of attachment shall not be issued by the clerk until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk, and undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Where defendant is a non-resident, undertaking not necessary. **9,** 235 (2 N. W., 366); **15,** 314 (18 N. W., 81). Not unconstitutional. **9,** 104 (1 N. W., 869). See **26,** 79 (42 N. W., 283).

4711 (201). The **order** of attachment shall be directed and delivered to the sheriff. It shall **require** him to attach the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the defendant in his county not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Sheriff's interest in goods is amount due on writ with costs. **29,** 87 (45 N. W., 274).

4712 (202). **Orders** of attachment may be **issued to** the sheriff of **different counties;** and several of them may, at the option of the plaintiff, be issued at the same time or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court.

Only one affidavit is necessary. **15,** 112 (17 N. W., 368).

4713 (203). The **return day** of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards it shall be twenty days after it is issued.

Subdivision 3.—Execution and Return Thereof.

4714 (204). When there are **several orders** of attachment against the same defendant, they shall be **executed** in the order in which they are received by the sheriff.

Attachment first levied is entitled to priority. **13,** 381 (14 N. W., 170).

4715 (205). The **order** of attachment shall be **executed** by the sheriff without **delay.** He shall go to the place where the defendant's property may be found, and there, in the presence of two residents of the county, declare that by virtue of said order he attaches said property at the suit of such plaintiff; and the officer, with the said residents, who shall be first sworn or affirmed by the officer, shall make a true inventory and **appraisement** of all the property attached, which shall be signed by the officer and residents, and returned with the order. Where the property attached is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order. Where it is personal property, and accessible, he shall take the same into his custody, and hold it subject to the order of the court.

An assignment placed in sheriff's hands before he levies an attachment is superior thereto. **18,** 354 (24 N. W., 682). Wrongful levy. **27,** 414 (43 N. W., 254). See **29,** 427 (45 N. W., 471).

4716 (206). The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an **undertaking** to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound.

Giving of an undertaking does not prevent owner from moving to dissolve attachment. **20,** 506 (31 N. W., 74). Giving of an undertaking does not operate as a dissolution. **9,** 410 (2 N. W., 862). Owner may have the property at any time by giving this bond. **15,** 18 (16 N. W., 826).

4717 (207). When the plaintiff, his agent or attorney, shall make oath, in writing, that he has good reason to and does believe that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such **garnishee** a copy of the order of attachment with a written **notice** that he appear in court at the return of the order of attachment, and answer, as provided in section two hundred and twenty-one.

As a rule clerk of district court not liable as garnishee; but there are cases where a court of equity will subject funds in hands of clerk to payment of debts **21,** 679 (33 N. W., 478). Municipal corporation not liable in. **2,** 169. In case stated, *held* that plaintiffs had an equitable lien on property in possession of garnishees and had not lost their rights by *laches*. **24,** 435–6 (39 N. W., 437). Note obtained by fraud not in the hands of a *bona fide* holder may be attached. **6,** 348. Cited, **13,** 188 (12 N. W., 821).

4718 (208). The copy of the **order** and the **notice** shall be **served upon** the **garnishee** as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other officer of the same, or a managing agent thereof.

4719 (209). **Different attachments of** the **same property** may be made by the same officer, and one inventory and appraisement shall be sufficient, and it shall not be necessary to return the same with more than one order.

One appraisement is sufficient. **22,** 89 (34 N. W., 76). These levies must be made while the officer has possession under his first levy. **25,** 289 (41 N. W., 149).

4720 (210). Where the **property** is under attachment, it shall be **attached under subsequent orders** as follows: *First*—If it be real property, it shall be attached in the manner prescribed in section two hundred and five. *Second*—If it be personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment. *Third*—If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section two hundred and seven.

Cited, **22,** 88 (34 N. W., 76).

4721 (211). The **officer** shall **return** upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return with the order all undertakings given under it.

As to return. **15,** 312 (18 N. W., 81.)

4722 (212). An **order** of attachment **binds** the **property** attached from the time of service, **and** the **garnishee** shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section two hundred and seven; but where the property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment.

Order of attachment binds the property from the time of service. **6,** 166. Attaching and garnishing creditors may enjoin sale of goods under execution, until priorities of liens are determined. **24,** 638 (39 N. W., 788). Cited, **13,** 381 (14 N. W., 170).

Subdivision 4.—Disposition of Attached Property.

4723 (213). The court, or any judge thereof, during vacation, may, on the application of the plaintiff, and on good cause shown, **appoint** a **receiver,** who shall take an oath faithfully to discharge his duty, and shall give an undertaking to the state of Nebraska, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of the court, for the faithful performance of his duty as such receiver, and to pay over all money, and account for all property which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct.

Cited, **12,** 347 (11 N. W., 491-577); **24,** 638 (39 N. W., 788).

4724 (214). Such **receiver** shall **take** possession of all notes, due bills, books of accounts, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer, as the **property** of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose he may commence and **maintain actions** in his own name as such receiver; but in such action no right of defense shall be impaired or affected.

4725 (215). Such **receiver** shall forthwith give **notice** of his appointment **to** the persons indebted to the defendent in attachment. The notice shall be written or printed, and shall be served on the debtor or **debtors,** by copy personally, or by copy left at the residence; and from the date of such service the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.

4726 (216). Such **receiver** shall, when required, **report** his proceedings to the court, and hold all moneys collected by him, and property which may come into his hands, subject to the order of the court.

4727 (217). Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and thirteen, the **sheriff** or other officer attaching the property shall **have** all the **powers,** and perform all the duties **of a receiver** appointed by the court or judge, and may, if necessary, commence and maintain actions in his own name as such officer. He may be required to give security, other than his official undertaking.

4728 (218). The court shall make proper orders for the **preservation of** the **property** during the pendency of the suit. It may direct the sale of property when, because of its perishable nature or the costs of keeping it, a sale will be for the benefit of the parties. In vacation such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirements and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail.

Subdivision 5.—Proceedings upon Attachment.

4729 (219). If the defendant, or any other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the **attachment** in such action shall be **discharged,** and restitution made of any property taken under it, or the proceeds thereof. Such **undertaking** shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

4730 (220). The **undertaking** mentioned in the last section may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court; the **sureties** in either case to be approved by the officer before whom the undertaking is executed.

4731 (221). The **garnishee** shall **appear** as follows: If the order of attachment be returned during a term of court, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and **answer** under oath all the questions put to him touching the property of every description and credits of the defendant in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of notice; * but a garnishee shall not be required to appear in this or in any other case unless there is tendered to him the same **fees** as a witness is entitled to in the suit in which the garnishee proceedings are had, and such fees may be taxed and collected in the same manner as other costs in such proceedings.

All after * added 1877, p. 10. Service of notice on garnishee creates a lien on goods; latter not subject to levy and sale during attachment. **24,** 638 (39 N. W., 788). Where garnishee abandons property, court may appoint suitable person to take charge of same. **24,** 639 (39 N. W., 788). Garnishee who has notice that defendant has assigned debt must so state in answer, to be protected from action by assignee. **27,** 82–3 (42 N. W., 896).

4732 (222). A **garnishee may pay** the money owing to the defendant by him, to the **sheriff** having the order of attachment, or into court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

4733 (223). If the **garnishee** do not appear in court and answer, as required by section two hundred and twenty-one, the court may proceed against him by attachment as for a **contempt.**

4734 (224). If the **garnishee** appear and answer, and it is discovered on his examination that, at or after the service of the order of attachment and notice upon him, he was possessed of any **property** of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

4735 (225). If the **garnishee** fail to appear and answer, or if he appear and answer and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the court, or deliver the property and pay the money owing into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an **action**, by filing a petition in his own name, as in other cases, and causing a summons to be issued upon it; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings **against** the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

The order of court is not conclusive on the garnishee; he may contest his liability. **16,** 497 (20 N. W., 836). The rights of an attaching creditor against a garnishee are no greater than the rights of the attachment debtor. **14,** 189 (15 N. W., 345). Cited, **14,** 242 (15 N. W., 342).

4736 (226). **Final judgment** shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the **garnishee** shall be **discharged** and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all the property, moneys, and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

4737 (227). If **judgment** be rendered in the action **for** the **defendant,** the **attachment** shall be **discharged,** and the property attached, or its proceeds, shall be returned to him.

4738 (228). If **judgment** be rendered **for** the **plaintiff,** it shall be **satisfied** as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon, for the residue, in all respects, as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

No judgment can be rendered without service of summons upon defendant either personally or by publication. **12,** 349 (11 N. W., 491, 577). Sale of attached lands under order of court is governed by the same restrictions and regulations as if the same had been levied on by execution. **14,** 220 (15 N. W., 344).

4739 (229). The court may compel the **delivery** to the sheriff, **for sale,** of any of the attached property for which an undertaking may have been given, and may proceed summarily on such undertaking to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments, as in cases of contempt.

4740 (230). The court may order the **sheriff** to **repossess himself**, for the purpose of selling it, of any of the attached property which may have passed out of his hands without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property as he would have under an order of attachment.

4741 (231). If personal **property** which has been attached be **claimed by** any **person other than** the **defendant**, it shall be the duty of the officer to have the validity of such claim tried, and such proceedings must be had thereon, with the like effect, as in case the property had been seized upon execution, and claimed by a third person.

4742 (232). Where **several attachments** are executed on the same property, or the same persons are made garnishees, the court, on the motion of any of the plaintiffs, may order a **reference** to ascertain and report the amounts and priorities of the several attachments.

Subdivision 6.—General Provisions.

4743 (233). From the time of the issuing of the order of attachment the court shall be deemed to have acquired **jurisdiction** and to have control of all subsequent proceedings under this chapter; and if, after the issuing of the order, the **defendant**, being a person, should **die**, or a corporation and its charter should expire by limitation, forfeiture, or otherwise, the proceeding shall be carried on; but in all such cases other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

4744 (234). The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for **additional security** on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this state, or is not sufficient for the amount thereof, it may vacate the order of attachment, and direct restitution of any property taken under it, unless in a reasonable time, to be fixed by the court, sufficient security is given by the plaintiff.

4745 (235). The **defendant** may, at any time before judgment, upon reasonable notice to the plaintiff, **move to discharge** an **attachment** as to the whole or a part of the property attached.

Merits of case not to be inquired into in motion to dissolve. **9**, 236 (2 N. W., 366). Motion will not avail after judgment. **9**, 408 (2 N. W., 862). Motion to dissolve for the reason that the petition was headed "Supreme Court of the State of New York." A writ of attachment which does not run in the name of the people of Nebraska is voidable only. **4**, 381. Discharged where cause for was a debt fraudulently contracted and one not so incurred, though amount of latter was but $8.50. **27**, 371-2 (43 N. W., 109). See **24**, 811 (40 N. W., 314).

4746 (236). If the **motion** be made upon **affidavits** on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made.

Secs. 4747 to 4750. "An act requiring copies of attachments to be filed in certain cases." 1873; G. S., p. 714. In force February 8.

4747. That whenever an **attachment** shall issue **to** any **other county** than the one in which the action is brought, and any lands shall be attached by virtue thereof, it shall be the duty of the officers attaching said property to make out a true **copy** of said order of attachment, and file the same in the office of the recorder of deeds of the county where the lands so attached are situated. He shall also certify upon said copy of said order of attachment, that the same is a true copy of the original writ received by him, and he shall also endorse thereon the description of the property attached, and the time when the same was attached, under and by virtue of the original order of attachment.

Undertaking must be given within time specified, or goods returned to adverse party. 9, 148 (1 N. W., 1011).

4748. It shall be the duty of the recorder of deeds of the county, when the **copy** of the order of attachment has been filed as provided in this act, to record the same in the miscellaneous record, together with the certificate of the officers heretofore mentioned, and such copy of said orders of attachment, and certificate so filed and **recorded,** shall be sufficient **notice** to subsequent purchasers of said land so attached as aforesaid.

4749. If the order of **attachment** be **discharged** it shall be the duty of the clerk of the court in which the action is brought to certify that fact, together with the time when the order was discharged, to the recorder of deeds in whose office the copy of said order has been recorded as aforesaid; whereupon such recorder shall file such **certificate,** and write across the record of such copy the word "discharged," and also the time of discharge as shown in said certificate.

4750. The **officer,** for making out said copy of the order of attachment, and the **clerk,** for recording the same, shall each receive such **compensation** as is now allowed by law for similar services, to be taxed in the costs, unless otherwise ordered by the court.

Secs. 4751 and 4752. "An act to provide for the retention of attached property pending a review on error of an order discharging an attachment." 1873. In force February 17. G. S., p. 715.

4751. That when an order discharging an order of attachment is made, and any party affected thereby shall except thereto, the court or judge shall fix the number of days, not to exceed twenty, in which such party may file his **petition in error,** during which time the **property** attached shall be **held by** the **sheriff** or other officer, during which period the petition in error shall be filed, and the party filing the same shall give an undertaking to the adverse party, with surety or sureties, to be approved by the court, in double the amount of the appraised value of the property attached, conditioned to pay said adverse party all damages sustained by such party in consequence of the filing of said petition in error, in the event that such order of attachment shall be discharged by the court in which said petition in error shall be filed, as having been unlawfully obtained.

The order may be reviewed without giving bond; that is only necessary to retain the property. **26,** 150 (41 N. W., 993); **15,** 17 (16 N. W., 826).

4752. The **original action** shall proceed to **trial** and judgment in every other respect as though no writ of error had been prosecuted.

ARTICLE II.—ATTACHMENTS IN CERTAIN ACTIONS.

4753 (237). A creditor may bring an **action on** a **claim** before it is **due** and have an attachment against the property of the debtor, in the following cases: *First*—Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts. *Second*—Where he is about to make such sale, conveyance, or disposition of his property, with such fraudulent intent. *Third*—Where he is about to remove his property, or a material part thereof, with the intent or to the effect of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts.

An attachment for a debt before due can only issue in substantial accordance with this statute.

11, 302 (9 N. W., 94). It is only in exceptional cases of fraud on the part of the debtor that actions can be brought on claims before due. **9,** 297 (2 N. W., 881). Court or judge must grant order. **6,** 528. Mere insolvency of debtor not a cause. **24,** 345 (38 N. W., 824).

4754 (238.) The **attachment** authorized by the last section may be **granted** by the court in which the action is brought, or by a judge thereof, or by the probate judge of the county; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent or attorney, shall make an oath, in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of the grounds for attachment enumerated in the preceding section.

Statute does not require affiant to swear that he is the plaintiff, his agent or attorney. **24,** 237 (38 N. W., 827). When county judge grants attachment and signs order officially, presumed that he is judge of county, and that district judge is absent therefrom. **24,** 336 (38 N. W., 827).

4755 (239). **If** the **court** or judge **refuse to grant** an order of attachment, the **action** shall be **dismissed,** but without prejudice to a future action; and in all such actions application for an attachment must be made.

4756 (240). The **order** of the court or judge granting the attachment shall **specify** the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action.

Order need not appear on face of writ. **29,** 92 (45 N. W., 274).

4757 (241). The order of attachment, as granted by the court or judge, shall not be issued by the clerk until there has been executed in his office such undertaking on the part of the plaintiff as is directed by section two hundred.

4758 (242). The plaintiff in such action shall not have **judgment** on his claim before it becomes due, and the proceedings on attachment may be conducted without delay.

4759 (243). The **proceedings** in the first article of this chapter subsequent to section two hundred shall, so far as they are applicable, regulate the attachments authorized by this chapter.

ARTICLE III.—GARNISHMENT IN CERTAIN CASES.

4760 (244). **In** all cases where an **execution** issued upon any judgment of a court of record, or of a justice of the peace, shall be returned by the officer in whose hands the same was placed for service, unsatisfied for want of sufficient property whereof to levy and collect the same, and the judgment creditor in such execution, his agent, or attorney, shall file an affidavit in the office of the clerk of the court, or justice of the peace, from which said execution issued, that he has good reason to and does believe that any person or corporation (naming them) have property of and are indebted to the judgment debtor, the said clerk or justice of the peace shall issue a summons as in other cases, requiring such person or corporation to appear in court and answer such interrogatories as shall be propounded to him, it, or them touching the goods, chattels, rights, and credits of the said judgment debtor in his, its, or their possession or control.

Execution must issue and return before garnishment. If judgment set aside, garnishee discharged. **6,** 349. Return of officer. **8,** 41. The equity of redemption in mortgaged or pledged personal property, even after condition broken, is such an interest as may be reached by attachment or garnishment before judgment or by garnishment after judgment in aid of execution. **14,** 218 (15 N. W., 606). But see **18,** 334 (25 N. W., 340).

4761 (245). The **summons** shall be made **returnable,** and the said persons or corporations shall be required to appear, as in ordinary cases of summons, and thereafter like **proceedings** shall be had therein, and said garnishees shall be held liable, in all respects, as in cases of garnishees before judgment.

4762 (246). The **summons** shall be **served** as a summons in an original action is served; the said **persons** or corporations so **summoned** shall be **liable** to the judgment creditor in said execution for all property, moneys, and credits in his, its, or their hands, or due from him, it, or them to the judgment debtor in said execution, at the time of, and which may come into his, its, or their hands or control, after the service of said summons.

4763 (247). No proceedings against such garnishee or garnishees shall be quashed, or such garnishee or garnishees discharged, by reason of any **informality** or irregularity, merely, of the affidavit or summons provided for in this article.

Cited, **14**, 215 (15 N. W., 606).

4764 (248). In cases where the **garnishee,** in answering such interrogatories, shall disclose that he has **property** in his possession, or under his control, belonging to the defendant or defendants in execution, the court shall order the same to be taken and **sold** by the officers upon execution, as in other cases.

4765 (249). In cases where the **garnishee,** in answering such interrogatories, shall disclose that he is **indebted** to the defendant in execution, the court shall order the garnishee to pay over the **amount** found to be **due** from the said garnishee to the defendant in execution, which amount shall be **collected** by execution, as in other cases, as near as may be, and such amount, when paid or collected, shall be credited on the original judgment, and the garnishee shall be credited for the amount so paid or collected.

Order not subject to collateral attack. **8,** 41. There is no personal *judgment* but simply an *order* to pay amount admitted to be due, which may be enforced by means of an ordinary execution. But order cannot be made if garnishee makes any legal or equitable claim to the amount in his hands or if he insists upon his right to hold it for any lawful purpose. **14,** 242 (15 N. W., 342); **18,** 304 (25 N. W., 94). The order made by the court is not conclusive on the garnishee—he may contest his liability. **16,** 497 (20 N. W., 836).

CHAPTER IV.—INJUNCTION.

4766 (250). The injunction provided by this code is **a command to refrain** from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and when so allowed it shall be by **order.** The writ of injunction is abolished.

Writ abolished. **19,** 131 (26 N. W., 925.)

4767 (251). When it appears by the **petition** that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a **temporary injunction** may be granted to restrain such act. It may also be granted in any case where it is especially authorized by statute.

Will be allowed when public officers are proceeding, under a color of right, to impair either public or private rights, or where their proceedings will result in great injury to private citizens without corresponding advantage to the public. **8,** 21. To prevent the discharge of water upon the lands of another. **8,** 45. To restrain sale under a fraudulent mortgage. **6,** 503. Where plaintiff, by replevin, obtains possession of certain drafts in dispute, he cannot refuse to prosecute the action and enjoin defendant from doing so. **24,** 578 (39 N. W., 600). Will not lie to prevent removal of county officers to county seat. **15,** 305 (18 N. W., 93). Will not lie to restrain building of bridge by plaintiff, when defendant has expended large sums of money in erecting another bridge without objection. **6,** 26.

4768 (252). The **injunction** may be **granted** at the **time** of commencing the action, or at any time afterward, before judgment, by the supreme **court** or any judge thereof, the district court or any judge thereof, or, in the absence from the county of said judges, by the probate judge thereof, upon it appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.

4769 (253). If the court or judge deem it proper that the defendant, or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose at a specified time and place, and may, in the meantime, restrain such party.

4770 (254). An injunction shall not be granted against a party who has answered, unless upon notice; but such party may be restrained until the decision of the application for an injunction.

See 28, 431 (44 N. W., 488).

4771 (255). No injunction, unless provided by special statute, shall operate until the party obtaining the same shall give an undertaking, executed by one or more sufficient sureties, to be approved by the clerk of the court granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure to the party enjoined the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

Party enjoined not liable for contempt unless undertaking is given. 29, 233 (45 N. W., 685). When action on bond may be brought. 8, 237. Action on bond. See 9, 216 (2 N. W., 459).

4772 (256). The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall endorse upon the summons, "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same where notice of the application therefor has been given to the party enjoined. The service of the summons so endorsed, or the notice of the application for an injunction, shall be notice of its allowance.

4773 (257). Where the injunction is allowed during the litigation, and without notice of the application therefor, the order of injunction shall be issued, and the sheriff forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.

4774 (258). An injunction binds a party from the time he has notice thereof, and the undertaking required by the applicant therefor is executed.

4775 (259). No injunction shall be granted by a judge, after a motion therefor has been overruled, on the merits of the application, by his court; and where it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant by a court of inferior jurisdiction or any judge thereof.

4776 (260). An injunction granted by a judge may be enforced as the act of the court. Disobedience of an injunction may be punished as a contempt by the court, or by any judge who may have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction, against the party guilty of the same; and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars, for the use of the county, to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirement, or be otherwise legally discharged.

4777 (261). A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the state, or is insufficient, the court may vacate the injunction, unless, in a reasonable time, sufficient security be given.

4778 (262). On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.

4779 (263). If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge allowing, dissolving, or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed as if made by the court.

4780 (264). If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the injunction was granted.

4781 (265). A defendant may obtain an injunction upon an answer in the nature of a counter-claim. He shall proceed in the manner prescribed in this chapter.

Secs. 4782 to 4784. "An act to provide for supersedeas bonds in certain cases." 1889, p. 373. In force March 29.

4782. That in case of the dissolution or modification by any court, or any judge at chambers, of any temporary order of injunction, which has been or may hereafter be granted, the court or judge so dissolving or modifying said order of injunction shall at the same time fix a reasonable sum as the amount of a supersedeas bond, which the person or persons applying for said injunction may give, and prevent the doing of the act, or acts, the commission of which was, or may be sought to be restrained by the injunction so dissolved or modified.

4783. Such supersedeas bond shall be executed on or before twenty (20) days from the time of the order dissolving or modifying such injunction, shall be signed by one or more sufficient sureties, to be approved by the clerk of the court, and shall be conditioned that the party or parties who obtained such injunction shall pay to the defendant, or defendants, all damages which he or they shall sustain by reason of said injunction, if it be finally decided that such injunction ought not to have been granted.

4784. Such supersedeas bond shall stay the doing of the act or acts sought to be restrained by the suit, and continue such injunction in force until the case is heard and finally determined by the judgment, decree, or final order of the court in term time.

CHAPTER V.—RECEIVERS.

4785 (266). A receiver may be appointed by the supreme court, or the district court, or by the judge of either, in the following cases: *First*—In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of any party to the suit, when the property or fund is in danger of being lost, removed, or materially injured. *Second*—In an action for the foreclosure of a mortgage, when the mortgaged property is in danger of being lost, removed, or materially injured, or is probably insufficient to discharge the mortgage debt. *Third*—After judgment, or decree to carry the same into execution, or to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal. *Fourth*—In all cases provided for by special statutes. *Fifth*—In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Appointment discretionary with district judge. 9, 382 (2 N. W., 893).

4786 (267). No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be affected thereby, of the time and place of the application, the names of the proposed receiver and of his proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served upon the adverse party, or his solicitor, at least five days before the proposed hearing, and one additional day for every thirty miles of travel from the place of serving the notice to the place where the application is to be made, by the usually traveled route, or shall be published in the same manner as notices of the pendency of suits to non-resident defendants.

Order appointing receiver without notice served on defendant void. **21,** 295 (32 N. W., 62). Requirements of this section do not affect power of court to grant amendments on hearing of application. **29,** 682 (46 N. W., 152.)

4787 (268). Should the delay occasioned by the giving of the notice provided for in the last preceding section be hazardous to the rights of any party, the court or judge may by order direct the sheriff of the county in which such action is pending to take temporary possession of the property, and shall appoint an early day for the hearing of the application, and if at such hearing the application is refused, restitution shall be made of the property to the party from whom the same was taken.

4788 (269). Every order appointing a receiver shall require the applicant to give a bond conditioned to pay all damages which the other parties to the suit, or any of them, may sustain by reason of the appointment of a receiver in case it shall be finally decided that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver and obey all orders of the court. The said bonds shall each run to the defendant, and all adverse parties in interest, and be for the use of any party to the suit, and be in a penal sum equal to double the value of the property in question, and be executed by two or more sureties, to be approved by the court or judge making the appointment, and be filed in the office of the clerk of the district court; nor shall the same be considered executed until they are so filed.

Amended 1875, p. 36.

4789 (270). If a complainant shall desire the appointment of a receiver a the commencement of the action, he shall pray such appointment in his petition. If the occasion for a receiver shall arise while the suit is pending, the application shall be made by a petition entitled in the cause, signed and verified by the applicant, and setting forth the facts and circumstances making such appointment necessary or proper.

4790 (271). Any party to the suit may, upon the hearing of the application, show by affidavit, or otherwise, objections to the proposed sureties, and to the proposed receiver, and what is the value of the property to be taken possession of, and that a receiver ought not to be appointed. He may also nominate a person to be receiver, giving at the same time the names of his proposed sureties. No person shall be appointed receiver who is a party, solicitor, counsel, or in any manner interested in the suit.

4791 (272). Every order appointing a receiver shall contain special directions in respect to its powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions may be made in that behalf by the court or judge as may in the further progress of the cause become proper.

Not a final order. **29,** 682 (46 N. W., 152).

4792 (273). Every receiver shall be considered the receiver of any party to the suit, and no others.

4793 (274). Every **order** appointing a receiver **without** the **notice** provided for herein, shall be **void**, and every such order heretofore made, under which the appointee has not possessed himself of the property in question, shall be suspended until an order shall have been made, and the bonds executed and filed in accordance with the provisions of this chapter.

4794 (275). When a **decree** shall be rendered in a suit in which a receiver has been appointed, and such decree shall not finally determine the rights of the parties, any one of them may apply to the court for the possession of the property and proceeds thereof in the receiver's hands. If such application be resisted, the **matter** may be **referred** to a master, to take and report to the court the testimony of the parties. And on the coming in of said report, the court shall, by its order, award the possession of the property and the proceeds thereof to the party entitled thereto; and thereupon the receiver shall surrender the property and the proceeds thereof to such party. All **orders** appointing receivers, giving them further directions and disposing of the property, may be **appealed** to the supreme court in the same manner as final orders and decrees.

4795 (276). Whenever, in the exercise of their authority, the court or judge shall have ordered the deposit or **delivery of money**, or other things, and the **order** is **disobeyed**, the court or judge, in addition to punishing such disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court or judge.

Amended 1871, p. 112.

TITLE IX.—PROCEEDINGS BEFORE THE COURT.

CHAPTER I.—ISSUE.

4796 (277). **Issues arise** on the pleadings where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two **kinds**: *First*—Of law. *Second*—Of fact.

4797 (278). An **issue of fact arises**: *First*—Upon a material allegation in the petition, denied by the answer. *Second*—Upon a set-off or counter-claim presented in the answer and denied by the reply. *Third*—Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

CHAPTER II.—TRIAL.

ARTICLE I.—TRIAL IN GENERAL.

4798 (279). A trial is **a judicial examination** of the issues, whether of law or of fact, in an action.

Case must be tried on issue made by pleadings. **21**, 620 (33 N. W., 264).

4799 (280). **Issues** of law must be **tried** by the court, unless referred as provided in section two hundred and ninety-eight. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

A party to a foreclosure of a mechanic's lien cannot demand a jury. **15**, 437 (19 N. W., 644).
Court can only pass upon the issues raised by the pleadings. **5**, 411.

4800 (281). All other **issues** of fact shall be **tried by** the **court**, subject to its power to order any issue or issues to be tried by a jury, or referred as provided in this code.

Joining in issue before court waives right to jury. **8**, 474.

Sec. 4801 formed sec. 9, act of 1873; G. S., p. 713.

4801. **Actions** shall be **triable** at the first term of the court after the issues therein, by the **times** fixed for pleading, are or should have been made up; and when, by the times fixed for pleading, the issues are or should have been made up during a term, such action shall be triable at that term. When the issues are or should have been made up, either before or during a term of court, but after the period for preparing the trial docket of such term, the clerk shall place such actions on the trial docket of that term.

ARTICLE II.—TRIALS BY JURY.

Subdivision 1.—Formation of the Jury.

4802 (282). The general **mode** of summoning, impaneling, challenging, and swearing the jury is not changed by this code.

Subdivision 2.—Conduct of the Trial.

4803 (283). When the **jury** has been sworn the trial shall **proceed** in the following **order,** unless the court for special reasons otherwise direct: *First*—The plaintiff must briefly state his claim, and may briefly state the evidence by which he expects to sustain it. *Second*—The defendant must then briefly state his defense, and may briefly state the evidence he expects to offer in support of it. *Third*—The party who would be defeated, if no evidence were given on either side, must first produce his evidence; the adverse party will then produce his evidence. *Fourth*—The parties will then be confined to rebutting evidence, unless the court for good reasons, in furtherance of justice, permits them to offer evidence in their original case. *Fifth*—When the evidence is concluded either party may request instructions to the jury on points of law, which shall be given or refused by the court, which instructions shall be reduced to writing if either party require it. *Sixth*—The parties may then submit or argue the case to the jury. In the argument, the party required first to produce his evidence shall have the opening and conclusion. If several defendants having separate defenses appear by different counsel, the court shall arrange their relative order. *Seventh*—The court may again charge the jury after the argument is concluded.

Argument to jury governed by the order of introducing testimony. **22,** 655 (36 N. W., 128). Instructions may be given to the jury at any time before they retire. **5,** 191. Land-owner, in appeal in right of way cases, entitled to open and close. **17,** 435 (23 N. W., 348). In a libel, where defendant justifies and pleads no malice, plaintiff has opening and closing. **15,** 505 (19 N. W., 706). In motion to dissolve attachment the burden is on plaintiff, and he has opening and closing. **25,** 375 (41 N. W., 254). The order of introducing evidence is in the discretion of the trial court. **26,** 373 (42 N. W., 93). Where the evidence is not sufficient to make a case the court should so instruct. **17,** 39 (22 N. W., 73). Statements during argument, as to adverse attorney, if not in evidence and likely to prejudice jury, reversible error. **24,** 90 (38 N. W., 27).

4804 (284.) Whenever, in the opinion of the court, it is proper for the **jury** to have a **view of property** which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

4805 (285). When the case is finally submitted to the **jury** they may decide in court or retire for **deliberation.** If they retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night and at their meals. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

A verdict arrived at by dividing the sum of the amount of recovery named by each juror by 12 is not necessarily void. **23**, 668 (37 N. W., 609); **27**, 157 (42 N. W., 890).

4806 (286). **If** the **jury** are permitted to **separate** either during the trial or or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person, on the subject of the trial, and that it is their duty not to form or express any opinion thereon, until the cause is finally submitted to them.

4807 (287). After the **jury** have **retired** for deliberation, if there be a **disagreement** between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the **information** upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in presence of or after notice to the parties or their counsel.

Misstatement by the court of material testimony is reversible error. **29**, 697 (46 N. W., 154).

4808 (288). The **jury** may be **discharged** by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorly appears that there is no probability of their agreeing.

4809 (289). In all cases where the jury are discharged during the trial, or after the **cause** is submitted to them, it may be **tried again** immediately or at a future time, as the court may direct.

4810 (290). When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. When the verdict is announced, either party may require the **jury** to be **polled,** which is done by the clerk asking each juror if it his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

Not proper to arrive at verdict by dividing sum of estimates of each juror by whole number of jurors. **23**, 668 (37 N. W., 609); **27**, 157-8 (42 N. W., 890). General verdict must respond to all the issues between the parties. **1**, 317. When there is testimony that would support a verdict court not at liberty to disregard such testimony. **8**, 210. Jury may be allowed to separate after agreeing and sealing up verdict and afterward come into court and report it. **28**, 144 (44 N. W., 86).

4811 (291). The **verdict** shall be written, **signed** by the foreman, and **read** by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagree, the jury must be sent out again; but if no **disagreement** be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

Defective verdict may be amended by the jury or by the court with consent of jury. **7**, 83. Verdict handed to court in absence of parties and court not in session void. **4**, 89.

Subdivision 3.— Verdict.

4812 (292). The verdict of a jury is either general or special. A **general verdict** is that by which they pronounce, generally, upon all or any of the issues either in favor of the plaintiff or defendant. A **special verdict** is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.

A party cannot wait until after verdict and then ask for a special finding. **26**, 264 (41 N. W., 994).

4813 (293). In every action for the recovery of money only, or specific real property, the **jury,** in their **discretion,** may render a general or special verdict. In all other cases the **court** may **direct** the jury to find a special **verdict,** in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered on the journal.

It is error for the court to receive and enter up judgment upon a general verdict when special findings are not answered. **15,** 339 (18 N. W., 138). Submission of questions for special findings discretionary with trial judge. **24,** 353 (38 N. W., 732). Submission properly refused. **29,** 581 (45 N. W., 924). See **25,** 119 (41 N. W., 111).

4814 (294). When the **special finding** of facts is inconsistent with the general verdict, the former **controls** the latter, and the court may give judgment accordingly.

4815 (295). When by the verdict either party is entitled to recover money of the adverse party, the jury in their verdict must assess the **amount of recovery.**

Jury must assess amount of recovery. **19,** 578 (27 N. W., 646). Verdict of jury should find amount. **22,** 144 (34 N. W., 217). Entitled to same respect as verdict of jury. **9,** 187 (2 N. W., 455).

ARTICLE III.—TRIAL BY THE COURT.

4816 (296). The trial by **jury** may be **waived** by the parties in actions arising on contract, and with the assent of the court, in other actions, in the following manner: *First*—By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney. *Seccnd*—By written consent in person, or by attorney, filed with the clerk. *Third*—By oral consent in open court entered on the journal.

4817 (297). Upon the trial of questions of fact by the **court,** it shall not be necessary for the court to state its **finding,** except, generally, for the plaintiff or defendant, unless one of the parties request it, with a view of excepting to the decision of the court upon the questions of law involved in the trial, in which case the court shall state in writing the conclusions of fact found, separately from the conclusions of law.

If vague and uncertain will not support a judgment. **3,** 253. When judgment is that "defendants do have and recover judgment in this action against the plaintiffs and that said defendants recover of and from said plaintiffs their costs," is not a final judgment. **3,** 256. Statute merely requires the court to find the "conclusions of fact separately from the conclusions of law," but does not require it to separate its finding of facts. **14,** 196 (15 N. W., 348). It is error for court to refuse to make findings, and such error cannot be cured by subsequent rulings. **21,** 715 (33 N. W., 418). Justice must make finding of facts. **13,** 220 (13 N. W., 175). Court must make a finding of fact in all cases or judgment not valid. **28,** 421 (44 N. W., 479). Cited, **2,** 317.

ARTICLE IV.—TRIAL BY REFEREES.

4818 (298). All or any of the issues in the action, whether of fact or law, or both, may be referred, **upon** the written **consent of** the **parties,** or upon their oral consent in court entered upon the journal.

Purely legal question cannot be referred except by consent of parties **5,** 156; **24,** 578 (39 N. W., 600). A referee appointed to take testimony and report it to the court has no authority to decide upon the admissibility of the evidence offered. **14,** 187 (15 N. W., 347). Cited, **3,** 95.

4819 (299). When the parties do not consent, the **court** may, upon the application of either, or of its own motion, **direct** a **reference** in either of the following cases: *First*—When the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court that it is necessary that the party on the other side should be examined as a witness to prove the account, in which cases the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein. *Second*—Where the taking of an account shall **be necessary for** the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect. *Third*—Where a question of fact, other than upon the pleadings, shall arise upon motion or otherwise, in any stage of an action.

4820 (300). The **trial** before referees is conducted in the same manner as a **trial** by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court upon such trial. They must state the facts found and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The **report** of the referees upon the whole issue stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report has the effect of a special verdict.

Right of referee to proceed with a trial does not extend beyond time at which he is directed to make his report. **12,** 406 (11 N. W., 859). Mere failure of referee to *file* his report in time fixed in the order of reference, does not invalidate it. **13,** 43 (13 N. W., 13). A referee has authority, and it is his duty, to sign bill of exceptions in cases tried before him. **10,** 331 (6 N. W., 372). Exceptions referred to, apply only to the findings of fact or conclusion of law of referee. **11,** 130 (7 N. W., 539). To obtain a review of the decision of a referee, motion for new trial is necessary. **11,** 130 (7 N. W., 539). Entitled to same force as judgment of the court. **4,** 199. Special findings of same weight as special verdict. **16,** 459 (20 N. W., 632). Court should sustain report only when it corresponds to its own view of law and merits of case. **24,** 412 (39 N. W., 450). District court may set aside findings but decide the case on evidence reported by referee. Such evidence need not be preserved by bill of exceptions. Secs. 298, 301, 303, 307, and 310, cited **24,** 405 (39 N. W., 450).

4821 (301). In all cases of reference, the **parties,** except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and and the reference shall be ordered accordingly; and if the parties do not agree, the court shall **appoint** one or more **referees,** not exceeding three, who shall be free from exception.

Appointment. **3,** 93.

4822 (302). A **reference** as provided in this chapter cannot be ordered **by a probate court,** except by consent of parties to the reference and referees.

4823 (303). It shall be the duty of the referees to **sign** any true **exceptions** taken to any order or decision by them made in the case, and return the same with their report to the court making the reference.

If no exceptions to ruling of referee taken, finding will be conclusive. **6,** 381. Referee has authority to sign bill of exceptions which may contain all evidence, and must do so if necessary to determine questions raised. Such bill is not required to be signed by the judge, and is not subject to provisions of sec. 311 of the Civil Code for settling bills of exceptions. **12,** 162 (10 N. W., 545). Bill should be signed by referee, but if it is signed by district judge and no objection is made in district court, none will be heard in supreme court. **14,** 60 (14 N. W., 803). See note to section 300, referring to **10,** 331.

4824 (304). A judge in **vacation,** upon the written consent of the parties, may make an **order of reference** which the court, of which he is a member, could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court, with the other papers in the case.

4825 (305). The **referees** must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein according to the best of their understanding. The **oath** may be administered by any person authorized to take depositions.

4826 (306). The referees shall be allowed such **compensation** for their services as the court may deem just and proper, which shall be taxed as a part of **costs** in the case.

ARTICLE V.—EXCEPTIONS.

4827 (307). **[Definition.]**—An exception is an objection taken to a decision of the court upon a matter of law.

Must state grounds. 2, 248. Must be specific and definite. 8, 138; 8, 141. Each portion claimed to be erroneous must be specifically pointed out and excepted to or will be unavailing. 2, 360. No exception need be taken to a final judgment. 17, 399 (23 N. W., 1). Want of exceptions do not necessarily deprive a prisoner of a right to new trial for errors of the court prejudicial to him. 9, 303 (2 N. W., 710). See 4, 231; 1, 124; 2, 360; 2, 316.

4828 (308). The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the same to writing as hereinafter provided.

Amended 1877, p. 11. Unavailing unless taken in court below. 4, 526. To be available, exception must be taken at time of committing error. 6, 226; 7, 330. If court refuses to admit evidence, must offer to prove the facts and take exception. 28, 610 (44 N. W., 469); 28, 866 (45 N. W., 175). Instructions not excepted to at trial will not be considered in supreme court. 27, 557 (43 N. W., 346). Exceptions to the ruling of law by referee should be preserved in bill of exceptions taken at the time. 5, 237. Errors or irregularities occurring at the trial not subject to review unless exceptions taken. 7, 192. To be available, each specific instruction must be excepted to. 22, 650 (36 N. W., 128). Exception must be so definite that the court can readily understand to what it was intended to apply. 5, 187. In trial by referee, when all the facts are not preserved, findings of facts will not be disturbed. 7, 501. Error to read from a deposition of witness and then ask him if he had not so testified, should first submit the deposition to witness. 8, 157. Cited, 12, 602 (12 N. W., 109).

4829 (309). No particular form of exception is required. The exception must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible.

Ground of the objection should be stated, together with the ruling of the court, and both preserved by bill of exceptions, or court will not consider them. 3, 235. Objection unavailing unless grounds stated. 7, 438. General exception to instructions insufficient. 24, 300 (38 N. W., 780). Where the exception is for the admission of illegal evidence on the trial, the bill of exceptions need contain no more of the testimony than is necessary to explain the exception taken. The effect of the opposite attorneys agreeing to a bill of exceptions discussed. 12, 230 (10 N. W., 718). See 1, 175.

4830 (310). Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

Objections not embodied in bill of exceptions disregarded. 8, 15. When objection to testimony is made reason should be given. 3, 279. Cited, 1, 363; 2, 316.

4831 (311). **[Bill of exceptions.]**—Where the decision is not entered on the record or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exceptions to writing within fifteen (15) days, or in such time as the court may direct, not exceeding forty (40) days from the adjournment of the court *sine die*, and submit the same to the adverse party or his attorney of record for examination and amendment if desired. Such draft must contain all the exceptions taken upon which the party relies. Within ten days after such submission the adverse party may propose amendments thereto and shall return said bill with his proposed amendments to the other party, or his attorney of record. The bill and proposed amendments must, within ten days thereafter, be presented by the party seeking the settlement of the bill to the judge who heard or tried the case, upon five (5) days' notice to the adverse party, or his attorney of record, at which time the judge shall settle the bill of exceptions. If no amendments are proposed, or if proposed and allowed, the proposed bill may be presented with the amendments, if any, to the judge for settlement, without notice to the adverse party or his attorney of record. When settled, the bill must be signed by the judge with his certificate to the effect that the same is allowed. In case of the death of the judge or when it is shown by affidavit that the judge is prevented by sickness, or absence from his district, as well as in cases where the parties interested shall agree upon the bill of exceptions (and shall have attached a written stipulation to that effect to the bill), it shall be the duty of the clerk to settle and sign the bill in the same manner as the judge is by this act required to do; and shall thereupon be filed with the papers in the case, and have the same force and effect as though signed by the court. In cases where a party seeking to obtain the allowance of a bill of exceptions has used due diligence in that behalf, but has failed to secure the settlement and allowance of the same as herein required, it shall be competent for the **judge** who tried the cause, upon due showing of diligence, and not otherwise, to **extend** the **time** herein allowed, but not beyond forty days additional to that herein provided, making such specific directions in that behalf as shall seem just to all parties.

Rewritten 1881, p. 202. Where it is sought to present to the supreme court alleged errors occurring at the trial in district court, a bill of exceptions, settled and signed as required by law, is indispensably necessary, and no other paper, record, or showing can be made to take its place. **14,** 48 (15 N. W., 329). Stipulation of facts will not take place of bill. **29,** 219 (45 N. W., 626). Bill of exceptions is only necessary to bring that into the record which would not otherwise be in it. **13,** 256 (13 N. W., 215). What the bill must contain: Affidavits used below, **11,** 521 (9 N. W., 689); **14,** 275 (15 N. W., 352); **14,** 530 (16 N. W., 821); **16,** 372 (20 N. W., 264); **16,** 129 (20 N. W., 26). Depositions: **14,** 530 (16 N. W., 821); all evidence, **6,** 417; **5,** 238; all matters intended for consideration of supreme court, **6,** 102. Must not contain matters filed with clerk or entered on his journal. **11,** 232 (9 N. W., 58). Where illegal testimony is admitted over objection an exception must be taken to make objection available. **12,** 597 (12 N. W., 109). Where there is no bill of exceptions on file presumed that evidence supports findings. **8,** 437. Where there is no bill of exceptions court can only notice such errors as appear on the face of the records proper. **8,** 439. Applicable to equitable as well as legal actions. **10,** 17 (4 N. W., 309). Party has fifteen days in which to reduce exceptions to writing, but court may extend time not to exceed forty days. **8,** 321. The "fifteen days" commence to run from last day of term. Judge compelled by mandamus to sign bill of exceptions. **11,** 166 (8 N. W., 385). Supreme court will not review grounds on which trial judge extends time from forty to eighty days. **24,** 653 (39 N. W., 833). If no showing appears presumption is that bill of exceptions was signed within time provided by law. **20,** 508 (30 N. W., 943). Where forty days are allowed for presenting bill, if it is signed by the judge in twenty days thereafter, it is good. **23,** 222 (36 N. W., 491). Time within which bill may be allowed not extended by delay of trial judge in ruling on motion for new trial. Failure of adverse party to return bill in ten days not a waiver of the default. **27,** 616 (43 N. W., 407). Bill mislaid by mistake, time of loss deducted from whole time between rendition of judgment and filing in supreme court. **29,** 209 (45 N. W., 621). Where the record fails to show an extension of time, judge has no authority, after fifteen days allowed for serving the bill, to sign it on the ground that an attorney in the case is under a wrong impression as to his rights. **27,** 672 (43 N. W., 427). Statutory time to present bill is allowed after the filing of a remittitur. **20,** 33 (28 N. W., 849). Where an attorney of record to whom a bill of exceptions is presented proposes amendments thereto without objection, he cannot afterwards be heard to complain that it was not presented to him within the statutory time. **14,** 56 (14 N. W., 665). Where attorneys for the adverse party, when called on to propose amendments, certify on a bill which purports to contain the testimony that they have no amendments to propose, the court will presume that the bill contains all the testimony. **14,** 60 (14 N. W., 803). It is the duty of the adverse party, upon receiving a bill of exceptions, to propose amendments thereto, and return such bill in the time limited by statute. **12,** 207 (10 N. W., 705). If he fails to do so, and on that account bill was not settled in time allowed by statute, the bill will not be quashed on his motion. *Id.* And see **13,** 199 (13 N. W., 209). Where bill of exceptions is retained by trial judge until after time for appeal has passed, appellant is not deprived of his appeal. **19,** 395 (27 N. W., 399). Judge may be compelled to sign bill by mandamus if presented in time. **25,** 74 (40 N. W., 601). Bill not served upon adverse party within the time allowed, judge has no power to sign. **16,** 422 (20 N. W., 287). May be allowed and signed by judge after he goes out of office. **16,** 37 (19 N. W., 701). When bill of exceptions not filed within eighty days, the fault being with the reporter, held, should be signed. **22,** 146 (34 N. W., 346). Where trial had, and verdict, bill of exceptions must be presented within forty days from close of the term, though hearing on motion for new trial is continued to next term. **16,** 129 (20 N. W., 26). Where the parties interested agree upon a bill of exceptions by a written stipulation attached thereto, the clerk of the court can settle and allow it, independently of whether the judge is either disqualified or unable to do so. **14,** 452 (16 N. W., 474). Signed by clerk. **9,** 39 (2 N. W., 343). Though agreed to by attorneys, if not signed by judge or clerk, will be stricken from the files. **8,** 36; **8,** 97; **15,** 145 (17 N. W., 265). Provisions do not apply to justices of the peace. **11,** 528 (10 N. W., 409). Exception to opinion of probate judge upon questions of law arising during the trial of a case cannot be reviewed by petition in error unless trial had by jury. **4,** 96. Cited, **3,** 339. A motion to strike bill of exceptions from the file for the reason that said bill was allowed and filed in vacation not good;

correct practice is to raise question by motion to quash. Code of 1866. **5,** 218. Motion to quash bill of exceptions for the reason that decree was not rendered until five months after trial, held, that the trial term continued until a decision was rendered. **8,** 529. After case is submitted it is too late to object that the bill of exceptions had not been presented to adverse party. **13,** 272 (13 N. W., 285). Motion to quash bill of exceptions will not be entertained after case is submitted. **13,** 501 (14 N. W., 528). Unless a bill of exceptions is authenticated as required by law, the supreme court cannot consider it. **13,** 502 (14 N. W., 536). Objections in supreme court to bill of exceptions must be made in a reasonable time and come too late after the printing of briefs. **23,** 650 (37 N. W., 590). Superior court cannot correct, but will remand where errors are shown. **27,** 706 (43 N. W., 422). Bill of exceptions of cause tried in the district court must be filed in that court; and if the original bill is read in the supreme court, the district clerk's certificate that it is the original bill must be attached to it. **14,** 57 (14 N. W., 804). If not allowed or certified to may be stricken from files of supreme court. **27,** 556-7 (43 N. W., 346). Cited, **4,** 43; **1,**317; **2,** 404; **3,** 446.

Sec. 4832 added 1881, p. 204.

4832. This **act** shall **apply to all cases** hereafter decided as well as all that have been already adjudicated by final order or judgment; and that the provisions of this act shall apply to actions in equity sought to be appealed to the supreme court, under the act of March 3, 1873, entitled "An act to provide for appeals in actions in equity."

4833 (312). No **exception** shall be regarded, unless it is **material,** and prejudicial to the substantial rights of the party excepting.

4834 (313). **Exceptions** taken to the decision of any court of record may, by leave of such court, be **withdrawn from** the **files** by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

ARTICLE VI.—NEW TRIAL.

4835 (314). A new trial is **a re-examination** in the same court of an issue of fact **after** a **verdict** by a jury, report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated, and a new trial granted on the application of the party aggrieved, for any of the following **causes** affecting materially the substantial rights of such party: *First*—Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial. *Second*—Misconduct of the jury or prevailing party. *Third*—Accident or surprise, which ordinary prudence could not have guarded against. *Fourth*—Excessive damages, appearing to have been given under the influence of passion or prejudice. *Fifth*—Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property. *Sixth*—That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law. *Seventh*—Newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial. *Eighth*—Error of law occurring at the trial, and excepted to by the party making the application.

Motion for, necessary in order to obtain review. **5,** 238; **6,** 129. Likewise in an equity case. **28,** 72 (44 N. W., 873). But not necessary when court had only ruled on motion or demurrer to a pleading. **13,** 256 (13 N. W., 215). Motion addressed to the sound discretion of trial court. **20,** 372 (30 N. W., 258). But such discretion must not be abused. **11,** 394 (9 N. W., 558). Motion must contain all the errors complained of. **1,** 398; **2,** 317; **3,** 446. Errors must be specifically presented in motion, in order to be assigned in supreme court. **6,** 380; **8,** 143, 213, 276, 388; **9,** 211 (2 N. W., 464); 386 (2 N. W., 729); **13,** 228 (13 N. W., 214); **21,** 290 (31 N. W., 933); **24,** 605 (39 N. W., 620); 629 (39 N. W., 784). General assignment insufficient. **7,** 138; **24,** 772 (40 N. W., 287). Grounds: (1) Admission of immaterial and irrelevant testimony over defendant's objection. **1,** 406-8; **20,** 513 (30 N. W., 941); **12,** 597 (12 N. W., 109). Disregard by jury of material testimony which, if considered, would have required a different verdict. **12,** 597 (12 N. W., 109). Disregard by jury of instructions. **2,** 342; **9,** 490 (4 N. W., 81). (2) Misconduct of attorney of prevailing party. **20,** 172 (29 N. W., 292). No ground for, that juror was asleep and court's attention was not called to it. **12,** 5 (10 N. W., 413). Not granted on charge that juror conversed with outsider during trial, if denied by such juror and not sustained by trial court. **24,** 235 (38 N. W., 794). (3) Unavoidable accident. **7,** 299. (4) Verdict clearly against weight of evidence. **5,** 527; **6,** 309, 315; **9,** 66 (2 N. W., 381); **13,** 475 (14 N. W., 387). But it must be *clearly* so. **1,** 404, 406; **7,** 284, 309; **9,** 71 (2 N. W., 363); **20,** 310 (30 N. W., 59). Balanced or conflicting evidence is not sufficient. **7,** 42, 146. Nor mere difference of opinion between court and jury. **8,** 357; **6,** 157, 401, 489; **9,** 534. (7) Merely cumulative evidence insufficient. **7,** 224; **28,** 333 (44 N. W., 441); **29,** 95 (45 N. W., 272). Affidavit must state what particular effort has been made to procure testimony. **8,** 389; **13,** 397 (14 N. W., 379). And it must clearly appear that such evidence could not be obtained at first trial. **3,** 266. New trial will not be granted for newly discovered evidence which merely tends to discredit opposite witnesses. **13,** 438 (14 N. W., 165). The rule is that if, with the newly discovered evidence before them, the jury would not have come to the same conclusion, a new trial will be granted. **13,** 438 (14 N. W., 165). Evidence taken on hearing of petition for new trial in action for personal injury which merely tends to show that injury was committed in somewhat different manner than that testified to, is insufficient. Newly discovered evidence, as well as that given at the trial, should be set out in a bill of exceptions. **24,** 758–9 (40 N. W., 298). Referee cannot grant motions for new trial. **11,** 439 (9 N. W., 573). Party appealing to supreme court is estopped from assailing judgment on the ground of irregularity in entering. **3,** 443. Must fully present his case to the court below and obtain ruling thereon before entitled to review in supreme court. **5,** 187. To entitle a litigant to new trial there must be a final judgment in the court below. In case cited entry mere recital. **7,** 228. Affidavit for, on account of lost deposition must set out testimony contained therein. Alleged violation of agreement to postpone trial, denied by prevailing party, not ground for. **29,** 585 (45 N. W., 930). Neglect of attorneys—as ground for. **23,** 64 (36 N. W., 359). Not granted unless it appear reasonably certain that wrong has been done. **3,** 356. Not granted on evidence superinduced by extra-judicial statements of trial judge not in harmony with record. **24,** 300 (38 N. W., 780). See **4,** 114; **5,** 358; **20,** 314 (30 N. W., 61); **21,** 500 (32 N. W., 576); **24,** 314 (39 N. W., 450); **24,** 818 (40 N. W., 410).

4836 (315). A new trial shall **not** be **granted** on account of the **smallness of damages** in an action for an injury to the person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained.

Cited, **1,** 169.

4837 (316). The **application** for a new trial must be **made** at the term the verdict, report, or decision is rendered, and, except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

No limit as to time within which ruling must be made. Affidavits in support of motion may be filed at any time before submission, though the three days have expired. **24,** 807 (40 N. W., 317). Where motion is made more than three days after verdict, or by amendment to motion previously filed, question raised should not be considered. **24,** 286 (38 N. W., 740); **6,** 535. Failure to except to overruling of motion will not justify supreme court in dismissing case. **29,** 320 (45 N. W., 466). "Unavoidably prevented," does not include mere neglect. **15,** 622 (20 N. W., 100). Cited, **23,** 679 (37 N. W., 593).

4838 (317). The application must be by **motion** upon **written** grounds, filed at the time of making the motion. *It shall be sufficient, however, in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity.* The causes enumerated in subdivisions 2, 3, and 7 of section 314 must be sustained by affidavits showing their truth, and may be controverted by affidavits.

* to * inserted 1881, p. 201. Motion for new trial must be made and ruled on in all cases of the trial of issues of fact to obtain a review in the supreme court. **10,** 475 (6 N. W., 760). Oral motion or written one not specifying grounds therefor not sufficient. **28,** 587 (44 N. W., 864). Motion must contain all the grounds defendant claims relief upon. **25,** 122 (41 N. W., 128). Instructions must be specially excepted to. **15,** 23 (16 N. W., 833). Where there are two defendants and one of them desires to raise a question peculiar to himself he should make a separate motion and not join with his co-defendant. **23,** 691 (37 N. W., 603). Motion for new trial not necessary when error is taken from justice of the peace. **9,** 504 (4 N. W., 237). Motion for new trial unnecessary in cases brought to district court from justice, where no retrial of issues of fact is to be had. **11,** 527 (10 N. W., 409).

4839 (318). Where the **grounds** for a new trial could **not** with reasonable diligence have been **discovered before,** but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition, filed as in other cases; on which a summons shall issue, be returnable and served, or publication made, as prescribed in section seventy-nine. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

Petition should show why facts not discovered sooner. **17,** 450 (23 N. W., 353, 511). Only applicable to causes named in section 314. **17,** 69 (22 N. W., 78). Neglect of attorney not sufficient. **15,** 621 (20 N. W., 100). New trial will not be granted after stay of execution taken. **20,** 315 (30 N. W., 56). See **24,** 545 (39 N. W., 597).

ARTICLE VII.—GENERAL PROVISIONS.

4840 (319). Whenever **damages** are recoverable, the plaintiff may claim and recover any **rate** of damages to which he may be entitled for the cause of action established.

Measure of damages in action in nature of trespass *de bonis asportatis.* **24,** 65 (37 N. W., 688). Damages for failure to ship goods will not be sustained. **2,** 260. Where a contract to place machinery in a mill by a certain day, and the mill is not ready at that day, damages will not be allowed for failure to place machinery at time specified. **1,** 355. Measure of damages is worth, not cost. Rule is difference between the value of machinery furnished and what it would cost to replace the same with such as was demanded by the contract. **1,** 356. Cited, **3,** 130.

4841 (320). The **provisions** of this title respecting trials by jury **apply,** so far as they are in their nature applicable, **to trials by** the **court.**

ARTICLE VIII.—TIME OF TRIAL.

4842 (321). The **clerk** of the district court shall keep at least eight **books,** to be called the appearance docket, the trial docket, the journal, the complete record, the execution docket, *the fee book, the general index, and the judgment record.

All after * added 1873, G. S., p. 579. The fee book of the clerk is a public record, open to the inspection of all interested. **19,** 106 (26 N. W., 620). Where transcript of judgment from county court is filed in district court, it is notice to purchasers of real estate if not placed on general index. **19,** 303 (27 N. W., 125).

4843 (322). On the appearace docket, he shall **enter** all actions **in** the **order** in which they were brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, and all subsequent pleadings. *On the general index he shall enter the names of the parties to every suit, both direct and inverse, with the page and book where all proceedings in such action may be found. The judgment record shall contain the judgment debtor and the judgment creditor, arranged alphabetically, the date of the judgment, the amount of the same, and the amount of costs, with the page and book where the same may be found. Transcripts of judgments from justices of the peace, or courts of probate, filed in the district court, shall be entered upon said judgment record; and whenever any judgment is paid off and discharged, the clerk shall enter such fact upon the judgment record in a column provided for that purpose.

All after * added 1873, G. S., p. 579. Index a part of record. **7,** 171.

4844 (323). The **trial docket** shall be made out by the clerk of the court at least twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up when either party is in default of a pleading. *If the defendant fails to answer or demur, the cause for the purpose of this section shall be deemed to be at issue upon questions of fact, but in every such case the plaintiff may move for and take such **judgment** as he is entitled to, on the defendant's **default,** on or after the day on which said action shall be set for trial. No witnesses shall be subpœnaed in any case while the cause stands upon issue of law; and whenever the court shall regard the **demurrer** in any case as **frivolous,** and put in for delay only, no leave to answer or reply shall be given, unless upon payment of all costs then accrued in the action; *Provided,* That when the number of actions to be docketed shall exceed three hundred, the judge or judges of the district court for the county may by rule or order classify them in such manner as they may deem expedient, and cause them to be placed according to such classification upon different dockets; and the respective dockets may be proceeded with and causes thereon be tried, heard, or otherwise disposed of, concurrently by one or more of the judges; and provision may be made by rule of court that issues of fact shall not be for trial at any term when the number of pending actions shall exceed three hundred, except upon such previous notice of trial as may be prescribed thereby.

All after * added 1887, p. 647.

4845 (324). The **trial** of an issue of fact, and the assessment of damages in any case, shall be **in** the **order** in which they are placed on the trial docket, unless, by consent of the parties, or the order of the court, they are continued, or placed at the heel of the docket, *or temporarily postponed.* The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear at any time a motion, and may by rule prescribe the time for hearing motions, *and provide for dismissing actions without prejudice for want of prosecution.

* to * and all after third * added 1887, p. 648.

Secs. 325 and 326 repealed. Laws 1867, 12th sess., Ty., p. 7.

4846 (327). The clerk shall make out a copy of the **trial docket** *and other dockets, if any,* **for** the **use of** the **bar** before the first day of the term of court.

* to * added, 1887, p. 649.

Sec. 4847 added 1887, p. 649.

4847. The clerk shall make out a copy of the dockets for the use of the bar before the first day of the term of court.

TITLE X.—EVIDENCE.

CHAPTER I.—COMPETENCY OF WITNESSES.

4848 (328). Every human being of sufficient capacity to understand the obligation of an oath is a **competent witness** in all cases, civil and criminal, except as otherwise herein declared. The following persons shall be **incompetent** to testify: *First*—Persons of unsound mind at the time of their production. *Second*—Indians and negroes who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them intelligently and truly. *Third*—Husband and wife, concerning any communication made by one to the other during marriage, whether called as a witness while that relation subsists or afterward. *Fourth*—An attorney, concerning any communication made to him by his client in that relation or his advice thereon, without the client's consent in open court or in writing produced in court. *Fifth*—A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession.

Thoughts and understandings not evidence. **6,** 55; **7,** 74. Opinion of witness not admissible. **6,** 11. Expert witness. **22,** 802 (36 N. W., 465). Right to cross-examination limited to facts and circumstances stated in direct examination. **1,** 395; **7,** 340. Question of credibility is for the jury to determine. **7,** 309. Party to an action may be called to testify by his adversary. **21,** 277 (31 N. W., 929). An Indian was held incompetent to testify because it was not shown that he had the capacity to understand the obligations of an oath. **10,** 399 (6 N. W., 468). Communication, to be privileged, must be made while the relation of client and attorney exists. **18,** 582 (26 N. W., 351.

4849 (329). No **person having** a **direct legal interest** in the result of any civil action or proceeding, when the adverse party is the representative of a deceased person, shall be permitted to testify to any **transaction** or conversation had **between** the **deceased person and** the **witness,** unless the evidence of the deceased person shall have been taken and read in evidence by the adverse party in regard to such transaction or conversation, or unless such representative shall have introduced a witness who shall have testified in regard to such transaction or conversation, in which case the person having such direct legal interest may be examined in regard to the facts testified to by such deceased person or such witness, but shall not be permitted to further testify in regard to such transaction or conversation.

Rewritten 1883, p. 328. "Representative" defined. **3,** 150. Where plaintiff by his agent and defendant contracted and the agent died, defendant is not estopped from testifying when sued by plaintiff. **25,** 442 (41 N. W., 287). Party cannot render himself competent to testify by transfering his interest during pendency of action. **13,** 248 (13 N. W., 277). Cited and applied, **13,** 78 (12 N. W., 926); **13,** 300 (14 N. W., 399); **12,** 46 (10 N. W., 532); **27,** 343 (43 N. W., 107).

4850 (330). **Facts** which have heretofore caused the exclusion of testimony may still be shown for the purpose of **lessening** its **credibility.**

4851 (331). The **husband** can in no case be a witness against the **wife,** nor the wife against the husband, except in a criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witnesses for each other.

Papers or letters offered in evidence, it will not be questioned by the court whether they are communications between husband and wife. **6,** 549. Wife is a competent witness when husband charged with adultery. **17,** 529 (23 N. W., 507).

4852 (332). Neither husband nor wife can be examined in any case as to any **communication** made **by** the **one to** the **other** while married, nor shall they, after the marriage relation ceases, be permitted to reveal, in testimony, any such communication made while the marriage subsisted.

4853 (333). No practicing attorney, counselor, physician, surgeon, minister of the gospel, or priest of any denomination shall be allowed, in giving testimony, to disclose any **confidential communication,** properly intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

When attorney's authority is disputed by his client he may in certain cases testify. **19,** 414 (27 N. W., 384). Construed, **18,** 582 (26 N. W., 351).

4854 (334). The prohibitions in the preceding sections do not apply to cases **where** the **party** in whose favor the respective provisions are enacted **waives** the **rights** thereby conferred.

4855 (335). A **public officer** cannot be examined as to **communications** made **to** him in official confidence, when the public interests would suffer by the disclosure.

4856 (336). A **witness** is not excused from answering a question upon the mere ground that he would be thereby subjected to a **civil liability.**

4857 (337). But when the matter sought to be elicited would tend to render

him criminally liable, or to expose him to **public ignominy,** he is not compelled to answer, except as provided in the next section.

4858 (338). A witness may be interrogated as to his **previous conviction** for a felony. But no other **proof** of such conviction is competent except the record thereof.

It is not proper to ask if he had plead guilty to an offense. **16,** 361 (20 N. W., 289). Record from another state proper evidence of. **23,** 38 (36 N. W., 310).

4859 (339). When **part** of an act, declaration, conversation, or writing is **given in evidence** by one party, the **whole** on the same **subject** may be **inquired into** by the other; thus, when a letter is read, all other letters on the same subject between the parties may be given. And when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

4860 (340). When an instrument consists partly of **written** and partly of printed form, the former **controls** the latter where the two are inconsistent.

See **25,** 849 (41 N. W., 809).

4861 (341). When the **terms of** an **agreement** have been intended in a different **sense** by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

4862 (342). Historical **works,** books **of science** or **art,** and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.

Standard works on scientific subjects are admissible. **16,** 588 (20 N. W., 860).

4863 (343). When a **subscribing witness** is **absent** from the county in which the action is pending, denies or does not recollect the **execution** of the instrument to which his name is subscribed as such witness, its execution may be **proved** by other evidence.

Rewritten 1873; G. S., p. 583.

4864 (344). Evidence respecting **handwriting** may be given by comparisons made, by experts or by the jury, with writings of the same person which are proved to be genuine.

See **11,** 364 (9 N. W., 548).

4865 (345). The **entries** and other writings **of a person deceased,** made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it or when made in a professional capacity or in the ordinary course of professional conduct or when made in the performance of a duty specially enjoined by law.

4866 (346). **Books of account,** containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility: *First*—The books must show a continuous dealing with persons generally, or several items of charges at different times against the other party, in the same book. *Second*—It must be shown, by the party's oath or otherwise, that they are his books of original entries. *Third*—It must be shown in like manner that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof. *Fourth*—The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why the verification is not made.

These rules must be strictly complied with. **26,** 212 (42 N. W., 11). When admissible. **22,** 598 (35 N. W., 871). Books of account only admissible in evidence when they contain charges of one party against the other. **21,** 40 (31 N. W., 264. To be admissible in evidence must contain charges against opposite party, must be original entries and must be verified by the clerk making them. **22,** 368 (35 N. W., 192). Entries made by a clerk and not identified by him not admissible. **22,** 579 (36 N. W., 113). Wife competent witness to prove book of account when husband disqualified under section 329. **12,** 46, 47 (10 N. W., 532).

4867 (347). Every **private writing,** except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof.

Written contract admissible in evidence under general allegation that party contracted, without indicating how. **24,** 64 (37 N. W., 688).

4868 (348). The **judge** of the court is a **competent** witness for either party, and may be sworn upon the trial. But in such case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge.

4869 (349). The usual **protest by** a **notary** public, without proof of his signature or notarial seal, is evidence of the dishonour and notice of a bill of exchange or promissory note.

CHAPTER II.—MEANS OF PRODUCING WITNESSES.

4870 (350). The clerks of the several courts and judges of the probate courts shall, on application of any person having a cause or any matter pending in court, issue a **subpœna** for witnesses under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by any person not interested in the action, or by the sheriff, coroner, or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit; but no costs of **serving** the same shall be allowed, except when served by an officer.

4871 (351). The **subpœna** shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may **contain** a clause directing a witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence.

4872 (352). When the attendance of a witness before any officer authorized to take **depositions** is required, the **subpœna** shall be issued by such officer.

4873 (353). The **subpœna** shall be **served** either by reading or by copy delivered to the witness or left at his usual place of residence; but such copy need not contain the name of any other witness.

4874 (354). A **witness** shall **not** be obliged **to attend** for examination on the trial of a civil action, **except in** the **county** of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpœna is served upon him.

4875 (355). A **witness** may **demand** his traveling fees, and fee for one day's attendance, when the subpœna is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpœna. The fact of such demand and non-payment shall be stated in the return.

4876 (356). **Disobedience of** a **subpœna,** or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required.

4877 (357). When a witness fails to attend in obedience to a subpœna (except in case of a demand and failure to pay his fees), the court or officer before whom his attendance is required, may issue an **attachment** to the sheriff, coroner, or constable of the county, commanding him to arrest and bring the person therein named before the court or officer, at a time and place to be fixed in the attachment to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an **undertaking** with surety for his appearance. Such sum shall be endorsed on the back of the attachment, and if no sum is so fixed and endorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.

4878 (358). The **punishment for** the **contempt** mentioned in section three hundred and fifty-six shall be as follows: When the witness fails to attend in obedience to the subpœna (except in case of a demand and failure to pay his fees), the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases the court or officer may fine the witness in a sum not exceeding fifty dollars nor less than five dollars, or may imprison him in the county jail, there to remain until he shall submit to be sworn, to testify, or give his deposition. The fine imposed by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for whom the witness was subpœnaed. The witness shall also be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, to testify, or give his deposition.

Power to punish for contempt is inherent in every court having common law jurisdiction. 23, 852 (37 N. W., 668).

4879 (359). A **witness** so **imprisoned** by an officer before whom his deposition is being taken, may **apply to** a **judge** of the supreme court, district court, or probate court, who shall have power **to discharge him** if it appear that his imprisonment is illegal.

4880 (360). Every **attachment** for the arrest, or order of commitment to prison, of a witness by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of **commitment** may be directed to the sheriff, coroner, or any constable of the county where such witness resides or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailer.

4881 (361). A **person confined** in any prison in this state may, by order of any court of record, be required to be produced for oral **examination** in the county where he is imprisoned, but in all other cases his examination must be by deposition.

4882 (362). While a **prisoner's deposition** is being taken, he shall remain in custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

4883 (363). A **witness** shall **not** be **liable to be** sued in a county in which he does not reside, by being **served** with a **summons** in such county, while going, returning, or attending in obedience to a subpœna.

4884 (364). At the commencement of each day, after the first day, a **witness** may demand his **fees** for that day's attendance in obedience to a subpœna, and if the same be not paid he shall not be required to remain.

4885 (365). Before testifying the **witness** shall be **sworn** to testify to the truth, the whole truth, and nothing but the truth. The mode of administering an oath shall be such as is most binding upon the conscience of the witness.

CHAPTER III.—MODE OF TAKING THE TESTIMONY OF WITNESSES.

4886 (366). The testimony of witnesses may be taken in three **modes:** *First*—By affidavit. *Second*—By deposition. *Third*—By oral examination.

4887 (367). An **affidavit** is a written declaration under oath, made without notice to the adverse party.

4888 (368). A **deposition** is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories.

Witness must state facts, not understandings. 4, 183.

4889 (369). An **oral examination** is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

ARTICLE I.—AFFIDAVIT.

4890 (370). An affidavit may be **used** to verify a pleading, to prove the service of a summons, notice, or other process, in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law.

4891 (371). An affidavit may be **made** in and out of this state, **before** any person authorized to take depositions, and must be authenticated in the same way, except as provided in section one hundred and eighteen.

ARTICLE II.—DEPOSITIONS.

Subdivision 1.—When to be Used.

4892 (372). The deposition of any witness may be **used** only **in** the following **cases:** *First*—When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial by change of venue, or is absent therefrom. *Second*—When, from age, infirmity, or imprisonment, the witness is unable to attend the court, or is dead. *Third*—When the testimony is required upon a motion, or in any other case where the oral examination of a witness is not required.

May be read in evidence after new parties brought in to establish same facts. 1, 354. Deposition may be taken by notary in office of attorney interested. 22, 360 (35 N. W., 181). See 21, 362 (32 N. W., 66).

4893 (373). Either party may commence taking testimony by depositions at any **time** after service upon the defendant.

Subdivision 2.—Officers Who May Take Them.

4894 (374). Depositions may be taken **in this state before** a judge or clerk of the supreme or district court, or before a probate judge, justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this state, to be used therein, must be taken by an officer or person whose authority is derived within the state.

4895 (375). Depositions may be taken **out of the state by** a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this state to take depositions, or any person authorized by a special commission from this state.

Clerk of court out of state not authorized to take depositions without commission. 4, 368.

4896 (376). The officer before whom depositions are taken must **not** be a **relative or attorney** of either party, or otherwise interested in the event of the action or proceeding.

4897 (377). Any court of record of this state, or any judge thereof, is authorized to grant a **commission to take depositions** within or without the state. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree.

Subdivision 3.—Manner of Taking and Authenticating Them.

4898 (378). Prior to the taking of any **deposition,** unless taken under a special commission, a **written notice** specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent, or attorney of record, or left at his usual place of abode. The notice shall be **served** so as to allow the adverse party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service; and the examination may, if so stated in the notice, be adjourned from day to day. * The notice shall also specify the names of the witnesses to be examined. And when the place of taking the depositions shall be out of the state, or more than fifty miles from the place of trial of the action, the adverse party, within forty-eight hours after the service of the notice, may serve upon the party taking the deposition, his agent or attorney of record, written cross-interrogatories to be propounded to any witness, and such last-named party shall cause them to be transmitted to the officer before whom the deposition is taken, who shall propound them to the witness, and they shall be answered subject to objections, as in other cases.

All after * added 1875, p. 37. Notice served on the 24th to take on the 28th, two days' travel from place of service, one Sunday intervening, is one day less than legal time. **15,** 25 (17 N. W., 119). Sufficiency of notice, see **20,** 329 (30 N. W., 254).

4899 (379). When the party against whom the deposition is to be read is absent from, or a **non-resident** of the state, and has no agent or attorney of record therein, he may be **notified** of the taking of the deposition **by publication.** The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this state, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section eighty.

4900 (380). The **deposition** shall be **written** in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

Signature by mark sufficient. **20,** 329 (30 N. W., 254).

4901 (381). The **deposition** so taken shall be **sealed** up and endorsed with the title of the cause and the name of the officer taking the same, and by him addressed and **transmitted to** the **clerk** of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney.

4902 (382). **Depositions** taken pursuant to this article shall be **admitted** in evidence on the trial of any civil action or proceeding pending before any justice of the peace, mayor, or other judicial officer of a city or town corporate, or before any arbitrators or referees, and such deposition shall be sealed up, endorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor, or other judicial officer, arbitrators, or referees.

4903 (383). **When** a deposition has once been taken, it may be **read** in any stage of the same action or proceeding, or in any other action or proceeding, upon the same matter between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this title.

When adverse party has appeared and cross-examined, he may read such portion of the deposition as he chooses without being compelled to read the whole. **14,** 192 (15 N. W., 340).

4904 (384). Depositions taken pursuant to this title, by any judicial or other officer herein authorized to take depositions, having a **seal** of office, whether resident in this state or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of **authentication** shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this state, shall be certified and signed by such officer, and shall be further authenticated either by parol proof adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same, within the meaning of this chapter, authorized to take the same. But if the deposition be taken within this state by an officer having no seal, or within or without this state under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

Deposition taken before notary public in another state may be read in evidence without further authentication. **4**, 177. Deposition should contain venue. **8**, 78.

4905 (385). The **officer** taking the deposition shall annex thereto a **certificate** showing the following facts: *First*—That the witness was first sworn to testify to the truth, the whole truth, and nothing but the truth. *Second*—That the deposition was reduced to writing by some proper person (naming him). *Third*—That the deposition was written and subscribed in the presence of the officer certifying thereto. *Fourth*—That the deposition was taken at the time and place specified in the notice.

4906 (386). **When** a deposition is offered to be **read** in evidence, it must appear to the satisfaction of the court that for any cause specified in section three hundred and seventy-two, the attendance of the witness cannot be procured.

It will be presumed that a non-resident cannot be present. **21**, 362 (32 N. W., 66). But to be available, objection must be made before the deposition is read. **14**, 193 (15 N. W., 340).

4907 (387). Every **deposition** intended to be read in evidence on the trial must be **filed** at least one day before the trial.

4908 (388). The following **fees** shall be allowed for taking depositions in the state, viz.: Swearing each witness, five cents; for each subpœna, attachment, or order of commitment, fifty cents; for each hundred words contained in such deposition and certificate, ten cents, and no more; and such officer may retain the same until such fees are paid. Such officer shall also tax the costs of the sheriff or other officer who shall serve the process aforesaid, and fees of the witness, and may also, if directed by the persons entitled thereto, retain such depositions until said fees are paid.

Subdivision 4.—Exceptions to Depositions.

4909 (389). Exceptions to depositions shall be **in writing**, specifying the grounds of objection, and **filed** with the papers in the cause.

4910 (390). No exception other than for incompetency or irrelevancy shall be regarded, unless made and **filed before** the commencement of the **trial.**

Objections that answer is not responsive cannot be made on reading of deposition. **16**, 587 (20 N. W., 860). Cited, **13**, 47 (13 N. W., 13).

4911 (391). The **court** shall, on motion of either party, hear and **decide** the questions arising on exceptions to depositions **before** the commencement of the **trial.**

4912 (392). **Errors** of the court in its decisions upon exceptions to depositions are **waived,** unless excepted to.

Errors waived unless exceptions taken. **4**, 369.

CHAPTER IV.—ADMISSION, INSPECTION, AND PRODUCTION OF DOCUMENTS, AND GENERAL PROVISIONS.

4913 (393). Either party may exhibit to the other or his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of **genuineness.** If the adverse party or his attorney fail to give the admission in writing within four days after the request, and if the party exhibiting the paper or document be afterward put to any cost or expense to prove its genuineness and the same be finally **proved** or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall appear to the satisfaction of the court that there were good reasons for the refusal.

4914 (394). Either party or his attorney may demand of the **adverse party** an **inspection** and copy, or permission to take a copy **of** a book, paper or **document** in his possession or under his control, containing evidence relating to the merits of the action or defense therein. Such **demand** shall be in writing, specifying the book, paper, or document with sufficient particularity to enable the other party to distinguish it, and if compliance with the demand within four days be refused, the court or judge, on motion and notice to the adverse party, may in their discretion order the adverse party to give the other, within a specified time, an inspection and copy, or permission to take a copy of such book, paper, or document; and on failure to comply with such order, the court may exclnde the paper or document from being given in evidence, or, if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party by affidavit alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper, or document when he is examined as a witness.

Demand should be made on adverse party for paper. Secondary evidence not admitted until primary is satisfactorily accounted for. **5,** 520. Notice to adverse party to produce writings before evidence is given of their contents dispensed with on proof that such party has stated that writings are lost. **29,** 68–9 (45 N. W., 277). This section does not apply to public records open to the inspection of all. **19,** 342 (27 N. W., 224).

4915 (395). Either party or his attorney, if required, shall **deliver to the other party** or his attorney, a **copy of** any deed, instrument, or other **writing** whereon the action or defense is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence, at the trial, the original, of which a copy has been refused. This section shall not apply to any paper a copy of which is filed with a pleading.

4916 (396). **Printed copies** in volumes **of** statutes, code, or other written law, enacted by any other territory, state, or **foreign** government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing **law** in the courts or tribunals of such territory, state, or government, shall be **admitted** by the courts and officers of this state on all occasions, as presumptive evidence of such laws. The **unwritten** or common **law** of any other territory, state, or foreign government may be **proved** as facts by parol evidence, and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

4917 (397). **If** a **witness conceal himself,** or in any other manner attempt to avoid being personally served with a subpœna, any **sheriff** or constable having the subpœna **may** use all necessary and proper means to serve the same, and for that purpose may **break into** any **building** or other place where the witness is to be found, having first made known his business and demanded admittance.

4918 (398). In addition to the above remedies, if a **party** to a suit in his own right, on being duly subpœnaed, **fail to appear** and give testimony, the other party may, at his option, have a **continuance** of the cause as in cases of other witnesses, and at the cost of the delinquent.

Either party may subpœna the other. **21,** 278 (31 N. W., 929).

4919 (399). The supreme or district court may, by rule, require the **production of** any **papers** or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

4920 (400). The **petition for** that purpose must state the facts expected to be proved by such books or papers, and that as the petitioner believes, such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted to produce the book and papers, or show cause to the contrary, if the court deem such rule expedient and proper.

4921 (401). On **failing to obey** the **rule** or show sufficient cause for such failure, the same consequences shall ensue as if the party had failed to appear and testify, when subpœnaed by the party now calling for the books and papers.

4922 (402). Though a **writing called for** by one party is by the other produced, the **party** thus calling for it is **not obliged to use** it as evidence in the case.

DOCUMENTARY EVIDENCE.

4923 (403). **Publications** required by law to be made in a newspaper, may be **proved** by affidavit of any person having knowledge of the fact, specifying the time when and the paper in which the publication was made, but such affidavit must, for the purposes now contemplated, be made within six months after the last day of publication.

Proof of publication of notice may be made by the foreman of newspaper office. **10,** 77 (4 N. W., 929).

4924 (404). The posting up or **service** of any notice or other paper required by law, may be **proved** by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up.

4925 (405). Any **other fact** which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be **proved** by pursuing the course above indicated, as nearly as the circumstances of the case will admit.

4926 (406). Such **proof** so made may be **perpetuated** and preserved for future use by filing the papers above mentioned in the office of the judge of probate, and the original affidavit appended to the notice or paper, if there be one, and if not the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.

4927 (407). A copy of the **field notes** of any county surveyor, or a plat made by him, and certified under oath as correct, may be **received as evidence** to show the shape or dimensions of a tract of land, or any other fact whose ascertainment requires only the exercise of scientific skill or calculation.

EVIDENCE.

4928 (408). Duly **certified copies of** all **records** and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be **evidence** in all cases of equal credibility with the original records or papers so filed.

This includes chattel mortgages. **25,** 360 (41 N. W., 192). Proper method of correcting an imperfect record is by making a perfect one authenticated by proper certificates. **21,** 597 (33 N. W., 244).

4929 (409). Every **officer** having the custody of a public record or **writing** is **bound to give** any person on demand a **certified copy** thereof, on payment of the legal fees therefor.

4930 (410). The **certificate of** a public officer that he has made diligent and **ineffectual search for** a **paper** in his office is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.

4931 (411). The usual duplicate **receipt** of the receiver **of** any **land office,** or, if that be lost or destroyed, or beyond the reach of the party, the certificate of such receiver, that the books of his office show the sale of a tract of land to a certain individal, is **proof of title** equivalent to a patent against all but the holder of an actual patent.

United States land officer's certificate is such color of title as to start the statute of limitations to running. **23,** 847 (37 N. W., 671), Cited, **12,** 240 (11 N. W., 318); **2,** 458.

4932 (412). In the cases contemplated in the last three sections, the **signature of** the **officer** shall be **presumed to be genuine** until the contrary is shown.

4933 (413). A **judicial record** of this state, or of any other federal court of the United States, may be **proved** by the producing of the original, or by a copy thereof, certified by the clerk or the person having the legal custody thereof, authenticated by his seal of office, if he have one.

4934 (414). That **of a sister state** may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate, that the attestation is in due form of law.

Judgment of another state, on judgment note and *cognovit*, duly transcripted to this state constitutes a cause for action. **24,** 180 (38 N. W., 820). Judgment of a sister state court duly authenticated according to act of congress is conclusive on merits. **6,** 428.

4935 (415). The official **certificate of** a **justice of the peace** of any of the United States, to any judgment, and the preliminary proceeding before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides, stating that he is an acting justice of the peace of that county, and that the signature of his certificate is genuine, is sufficient evidence of such proceedings and judgment.

4936 (416). **Copies of records** and proceedings in the courts **of a foreign country** may be admitted in evidence, upon being **authenticated** as follows: *First*—By the official attestation of the clerk or officer in whose custody such records are legally kept. *Second*—By the certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally entrusted with the custody of such records, and that the signature to his attestation is genuine. *Third*—By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court.

4937 (417). **Acts of** the **executive** of the United States or of this state or of any state in the union, or of a foreign government, are **proved** by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislature of those governments respectively, or by either branch thereof.

4938 (418) The **proceedings of** the **legislature** of this state, or any state of the union, or of the United States, or of any foreign government, are **proved** by the journals of those bodies respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceedings were had, or by a copy purporting to have been printed by their order.

4939 (419). **Printed copies of** the statute laws of this state, or of any of the United States, or of congress, or of any foreign government, purporting or proved to have been published under the authority thereof, or proved to be commonly **admitted** as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state, as presumptive evidence of such law.

4940 (420). The **public seal** of the state or county affixed to a copy of a written law or other public writing, is also **admissible** as evidence of such law or writing respectively; the **unwritten law** of any other state or government may be **proved** as fact by parol evidence, and also by the books of reports of cases adjudged in their courts.

CHAPTER V.—PROCEEDINGS TO PERPETUATE TESTIMONY.

4941 (421). The **testimony** of a witness may be **perpetuated** in the following manner: The applicant shall file in the office of the clerk of the district court a **petition,** to be verified, in which shall be set forth, specially, the subject-matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give of such persons as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatives to be propounded to each; that the applicant expects to be a party to an action in a court of this state, in which such testimony will, as he believes, be material; and the obstacles preventing the immediate commencement of the action, where the applicant expects to be plaintiff.

4942 (422). The court, or judge thereof, may forthwith make an **order allowing** the **examination** of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

4943 (423). When it appears satisfactorily to the court or judge that the parties interested cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file **cross-interrogatories** to those contained therein.

4944 (424). The **witness** shall be **examined** upon the interrogatories of the applicant, and upon cross-interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some one of them. The **attorney** filing the cross-interrogatories shall be allowed a reasonable **fee** therefor, to be taxed in the bill of costs.

4945 (425). Such **depositions** shall be **taken** before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be **returned** to the clerk's office of the court in which the petition was filed.

4946 (426). The **court** or judge, if satisfied that the depositions have been properly taken, and as herein required, shall **approve** the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies, or successors in interest, such **depositions,** or certified copies thereof, may be **given** in evidence by either party, where the witnesses are dead, or insane, or where their attendance for oral examination cannot be obtained or required; but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action.

4947 (427). The applicant shall pay the **costs** of all proceedings under this chapter.

TITLE XI.—JUDGMENT.

CHAPTER I.—JUDGMENT IN GENERAL.

4948 (428). [Definition.]—A judgment is the final determination of the rights of the parties in an action.

Must be rendered while the judge is present and the court in session. **20,** 100 (29 N. W., 260). Final judgment, what is a. **7,** 398. Sufficiency of entry. **7,** 479. Judgment and findings must conform to and be supported by allegations of pleadings. **12,** 371 (11 N. W., 431). "It is considered by the court that said J. B. should have judgment entered and stand as against the said defendant, and that the plaintiff recover of and from the defendant his costs herein, taxed at $——," held, not a final judgment in ejectment. **14,** 377 (15 N. W., 703). Judgment in county court in following form was held not void: "I hereby render judgment against plaintiff for costs herein; judgment rendered against plaintiff for costs." **14,** 9 (14 N. W., 804). For form of judgment, see **21,** 590 (33 N. W., 259). In formal judgment, held not void. **24,** 248 (38 N. W., 780). Judgment conclusive. **1,** 440. Entry and finding on journal. **2,** 67. Failure of trial court to make finding not fatal. **9,** 278 (2 N. W., 858). Setting aside judgment final order. **9,** 275 (2 N. W., 858). Test of whether former judgment is a bar to action: will same evidence sustain both actions. **24,** 644 (39 N. W., 845). See **8,** 467.

4949 (429). Judgment may be given for or against one or more of several plaintiffs, and for and against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may in its discretion render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

On the trial of a joint action against the principal and sureties on an official bond the judgment may be against any number of the defendants, as the testimony warrants. But several actions on such bond cannot be maintained. And in such joint action for official negligence, a recovery may be had against the officer alone without proof of the execution of the bond, when the petition states a case against him exclusive of the bond. **10,** 531 (7 N. W., 276). Evidence sufficient to sustain judgment against one but insufficient as to others who fail to make motion for new trial by themselves alone, judgment will not be disturbed. **22,** 423 (35 N. W., 204). It is not error to dismiss the action as to one of several defendants and proceed as to the others. **18,** 677 (26 N. W., 476). Voluntary release of one joint judgment debtor operates as a reverse of his co-defendant. **12,** 508 (11 N. W., 755). Justice must make entry in terms provided by law, after which time no further authority. **6,** 533. Final judgment rendered against the property instead of the person not void. **2,** 155. Cited, **8,** 115; **15,** 423 (19 N. W., 467); **21,** 710 (33 N. W., 254).

Sec. 4950. "An act to give effect to the transcripts of judgments in the several district courts." 1869, p. 158. In force February 15.

4950. That the transcript of a judgment of any district court in this state may be filed in the office of the clerk of the district court in any county, and such transcript shall be a lien on the property of the debtor in any county in which such transcript is filed, in like manner as in the county where such judgment was rendered, and execution may be issued on judgment obtained by such transcript as on the original judgment; *Provided*, That such transcript shall at all times be effected and be in the same plight as the original judgment.

A transcript of a justice judgment must be filed in the district court of the county where rendered to become a lien on real estate. It cannot be sent directly to another county. **18,** 439 (25 N. W., 582). But judgment of county court can be sent direct to any county in the state. **18,** 562 (26 N. W., 253). Payment, though under protest, by one against whom judgment had been rendered by justice of peace to clerk of district court of another county, with whom transcript had been filed, cannot be recovered back. **24,** 95–6 (38 N. W., 32). Not specific lien on the real property of debtor, but a general lien subject to all prior incumbrances. **7,** 171.

Sec. 4951. "An act giving effect to judgments and decrees. 1869, p. 70. In force February 12.

4951. When any judgment or decree shall be rendered for a conveyance, release, or acquittance, in any court of this state, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith within the time mentioned in said judgment or decree, such judgment or decree shall have the same operation and effect, and be as available as if the conveyance, release, or acquittance had been executed conformable to such judgment or decree.

Secs. 4952 and 4953. "An act authorizing transcripts of judgments and decrees rendered in the state of Nebraska by the circuit and district courts of the United States to be filed in the counties of said state, and prescribing the conditions under which they may be filed." 1889, p. 377. In force March 28.

4952. That a transcript of any judgment or decree rendered in a circuit or district court of the United States, within the state of Nebraska, may be filed in the office of the clerk of the district court in any county in this state, and such transcript, when so filed and entered on the judgment record, shall be a lien on the property of the debtor in any county in which such transcript is so filed, in the same manner and under the same conditions only as if such judgment or decree had been rendered by the district court of such county; *Provided*, That such transcript shall at all times be affected and be in the same plight as the original judgment.

4953. Nothing herein shall be construed to require the docketing of a judgment or a decree of a United States court, or the filing of a transcript thereof in any state office within the same county in this state in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county.

4954 (430). An action may be dismissed without prejudice to a future action: *First*—By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court. *Second*—By the court, where the plaintiff fails to appear on the trial. *Third*—By the court, for want of necessary parties. *Fourth*—By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence. *Fifth*—By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be upon the merits.

Where plaintiff's evidence tends to support his cause of action court cannot dismiss case without verdict. **9**, 417 (2 N. W., 866); **15**, 584 (19 N. W., 638). Where an action is dismissed by the court without a hearing upon the merits, the order of dismissal will not bar a future action. **14**, 418 (16 N. W., 433). Dismissal terminates jurisdiction of court, and is not a final order which can be reviewed on error. **27**, 610–11 (43 N. W., 395.) With just provision for costs, cause may be reinstated when dismissed for want of prosecution without notice. **24**, 764 (40 N. W., 284). Motion to dismiss when plaintiff has rested before sufficiently proving his case, court will not entertain, but will allow party to withdraw rest and proceed with case. **9**, 401 (2 N. W., 853). Action in replevin cannot be dismissed after delivery of property without prejudice to a future action. **9**, 489 (4 N. W., 81). Action cannot be dismissed by plaintiff after submission and against objection of defendant. **22**, 640 (36 N. W., 121). Stipulation of parties to suit to dismiss held a valid agreement independent of jurisdiction of justice. **20**, 361 (30 N. W., 264).

Sec. 4955. "An act for the dismissal of certain actions in vacation." 1867, p. 51. In force June 12.

4955. That the party plaintiff, in any case pending in the district or supreme court of the state, shall, when no counter-claim or set-off has been filed by the opposite party, have the right in the vacation of any of said courts to dismiss his said action without prejudice, upon payment of costs, which said dismissal shall be, by the clerk of any of said courts, entered upon the journals and take effect from and after the date thereof.

Such dismissal is final where no set-off or counter-claim has been filed. **17**, 475 (23 N. W., 341).

4956 (431). In any case where a **set-off** or counter-claim has been **presented, the defendant** shall have the **right of proceeding** to the trial of his claim, although the plaintiff may have dismissed the action or failed to appear.

CHAPTER II.—JUDGMENT UPON FAILURE TO ANSWER.

4957 (432). If the taking of an account, or the proof of a fact, or the **assessment of damages,** be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may, with the assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee, master, or commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.

Party is in default when he fails to answer or demur in time limited by law. **11,** 398 (9 N. W., 475). Not in default until after answer day. **4,** 189. Error to enter judgment without taking default. **9,** 61 (10 N. W., 867). To set aside a default it is necessary for defendant to exhibit such excuse for default as he may be able and to show good defense in whole or part to action. **8,** 213. See **20,** 675 (31 N. W., 85); **21,** 598 (33 N. W., 244).

CHAPTER III.—JUDGMENT BY CONFESSION.

4958 (433). Any **person indebted** or against whom a cause of action exists may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor or person having such cause of action, **confess** judgment therefor, whereupon judgment shall be entered accordingly.

A judgment by confession must have the assent of the creditor, expressed or implied. **22,** 237 (34 N. W., 367). Cited, **10,** 356 (6 N. W., 414); **11,** 470 (9 N. W., 647).

4959 (434). The debt or **cause of action** shall be briefly **stated** in the judgment, or in a writing to be filed as pleadings in other actions.

4960 (435). Such **judgment** shall authorize the same proceedings for its **enforcement** as judgments rendered in actions regularly brought and prosecuted; and the **confession** shall **operate** as a release of errors.

4961 (436). Every **attorney** who shall confess judgment in any case shall, at the time of making such **confession,** produce the **warrant** of attorney for making the same to the court before which he makes the confession, and the original, or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

24, 142 (37 N. W., 926).

4962 (437). If any **person** be **in custody** in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to **confess** judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody be present, and sign the warrant of attorney as a witness.

CHAPTER IV.—MANNER OF GIVING AND ENTERING JUDGMENT.

4963 (438). When a trial by jury has been had, judgment must be **rendered** by the clerk **in conformity to** the **verdict,** unless it is special, or the court order the case to be reserved for future argument or consideration.

4964 (439). Where the **verdict** is **special,** or where there has been a special finding on particular questions of fact, or where the court has ordered the **case** to be **reserved,** it shall order what judgment shall be entered.

4965 (440). Where, **upon** the statements in the **pleadings,** one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

11, 471 (9 N. W., 647).

4966 (441). If a counter-claim or set-off established at the trial exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

4967 (442). It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.

4968 (443). All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action.

Entering another judgment does not dispose of first. 2, 68.

4969 (444). The clerk shall make a complete record of every cause as soon as it is finally determined, unless such record or some part thereof be duly waived.

4970 (445). He shall make up such record in each cause in the vacation next after the term at which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

4971 (446). The records shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account, or the copies of a paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.

Cited, on question of making complete record where pleadings are lost, 11, 471 (9 N. W., 647); 1, 326; 2, 317; 9, 76 (2 N. W., 349).

4972 (447). When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge of such court shall subscribe the same.

Includes judgments and decrees. 20, 101 (29 N. W., 260).

4973 (448). No complete record shall be made: *First*—In criminal prosecutions where the indictment has been quashed, or where the prosecuting attorney shall have entered a *nolle prosequi* on the indictment. *Second*—In cases where an action has been dismissed without prejudice to a future action. *Third*—In actions in which, in open court, at the term at which the final order or judgment shall be made, both parties shall declare their agreement that no record shall be made.

4974 (449). In cases where an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings upon being paid for making the same by the party desiring the record to be made.

4975 (450). A complete record shall be made in the case mentioned in section four hundred and thirty-one, unless waived by the parties.

CHAPTER V.—CONVEYANCE BY COMMISSIONERS.

4976 (451). Real property may be conveyed by master commissioners as hereinafter provided: *First*—When, by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment. *Second*—When specific real property is required to be sold under an order or judgment of the court.

4977 (452). A sheriff may act as a master commissioner under the second subdivision of the preceding section. Sales made under the same shall conform in all respects to the laws regulating sales of land upon execution.

4978 (453). The **deed** of a master commissioner shall contain the like recital, and shall be **executed,** acknowledged, and recorded, as the deed of a sheriff of real property sold under execution.

TITLE XII.—Causes of Action which Survive, and Abatement of Actions.

4979 (454). In addition to the causes of action which survive at common law, causes of action **for mesne profits,** or for an **injury to real or personal estate,** or for any deceit or **fraud,** shall also survive, and the action may be brought, notwithstanding the death of the person entitled or liable to the same.

4980 (455). No **action** pending in any court shall **abate by** the **death** of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office; which shall abate by the death of the defendant.

TITLE XIII.—Revivor.

CHAPTER I.—REVIVOR OF ACTIONS.

4981 (456). Where there are **several** plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining **parties,** the action may proceed, the **death** of the party, or the cessation of his powers, being stated on the record.

This and following sections apply to actions in justice court as well. **17,** 321 (22 N. W., 559).

4982 (457). **Where one** of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of a survivorship, and the **court** is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it **may proceed to try** the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

4983 (458). Where one of the parties to an **action** dies, or his powers as a **personal representative** cease, before the judgment, if the right of action survive in favor of or against his representatives or successor, the action may be revived, and proceed in their names.

Bastardy proceedings by mother on her death revived in name of county. **28,** 227 (44 N. W. 184). Cited, **12,** 329 (11 N. W., 303).

4984 (459). The **revivor** shall be by a conditional **order** of the court if made in term, or by judge thereof if made in vacation, that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.

Cited, **12,** 329 (11 N. W., 303).

4985 (460). The **order** may be **made on** the **motion** of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

4986 (461). If the **order** is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be **served** in the same manner, and returned within the same time, as a summons, upon the party adverse to the one making the motion, and if sufficient cause be not shown against the revivor, the action shall stand revived.

12, 330 (11 N. W., 303).

4987 (462). When the plaintiff shall make an affidavit that the representatives of the defendant, or any of them, in whose name the action may be ordered to be revived, are non-residents of the state, or have left the same to avoid the service of the order, or so conceal themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for four consecutive weeks, as provided by section seventy-nine, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

4988 (463). Upon the death of the plaintiff in an action, it may be revived in the names of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees, who could support the action if brought anew, the revivor may be in their names.

4989 (464). Upon the death of a defendant in an action, wherein the right or any part thereof survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both, when the right of action, or any part thereof, survives against them.

4990 (465). Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made in the manner directed in the preceding sections of this title.

4991 (466). An order to revive an action against the representatives or successor of a defendant shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made.

Actions may also be revived by bill after one year. 18, 81 (24 N. W., 680).

4992 (467). An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his powers have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section.

4993 (468). When it appears to the court by affidavit that either party to an action has been dead, or, where a party sues or is sued as a personal representative, that his powers have ceased, for a period so long that the action cannot be revived in the names of his representatives or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

4994 (469). At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days' notice of the application therefor, may have an order to strike the action from the docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

4995 (470). When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

CHAPTER II.—REVIVOR AND NEW PARTIES TO JUDGMENT.

4996 (471). When a judgment is recovered against one or more persons jointly indebted upon contract, those who were not originally summoned may be made parties to the judgment by action.

4997 (472). **If** either or both the **parties die** after judgment, and before satisfaction thereof, their **representatives,** real or personal, or both, as the case may require, may be **made parties** to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may be rendered and execution awarded as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased party.

Where a judgment is joint the revivor must be in that form. **12,** 329 (11 N. W., 303).

4998 (473). If a **judgment** become **dormant,** it may be **revived** in the same manner as is prescribed for reviving actions before judgment.

Upon proceedings to revive a dormant judgment no objections will be heard which seek to go behind the original judgment. **10,** 191 (4 N. W., 1043). It *seems* that the proceedings to revive a judgment should be by affidavit and not by petition. **10,** 191 (4 N. W., 1043). Can be revived at any time in any court. **18,** 81 (24 N. W. 680); **23,** 504 (37 N. W., 76). Revival of the original judgment continues it with all its incidents from the time of rendition. **6,** 424. Payment of dormant judgment is voluntary and cannot be recovered back. **24,** 309 (38 N. W., 847).

TITLE XIV.—EXECUTIONS.

4999 (474). Executions shall be deemed process of the court, and shall be **issued** by the clerk and **directed** to the sheriff of the county. They may be directed to different counties at the same time.

Execution issued without a seal is not void. Seal may be added. **15,** 199 (16 N. W., 842). If officer fail to show authority for seizing goods in possession of third party claiming them, such claimant is entitled to a judgment for possession and damages. **27,** 97 (42 N. W., 906).

5000 (475). Executions are of three **kinds:** *First*—Against the property of the judgment debtor. *Second*—Against his person. *Third*—For the delivery of the possession of real property with damages for withholding the same, and costs.

CHAPTER I.—AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

5001 (476). **Lands,** tenements, goods, **and chattels,** not exempt by law, shall be subject to the payment of debts, and shall be **liable** to be taken on execution and sold as hereinafter provided.

5002 (477). The **lands** and tenements of the debtor within the county where the judgment is entered, shall be **bound for** the **satisfaction** thereof, from the first day of the term at which judgment is rendered; but judgments by confession, and judgments rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

Lien attaches from the first day of the term at which it was rendered. **1,** 138; **1,** 294; **7,** 393. Lien of judgment is subject to all prior liens either legal or equitable. Unrecorded deed has precedence over simple judgment lien. **11,** 297 (9 N. W., 87). Judgment lien attaches to lands subsequently acquired. Does not create a specific lien. **7,** 394. And does not affect *bona fide* purchasers until levy made. **1,** 137. Judgment in the district court is not a lien upon an equitable interest in land. **18,** 649 (26 N. W., 471.) An equity in real estate cannot be sold on an ordinary execution on a law judgment so as to give good title. **25,** 735 (41 N. W., 777.) Cited, **12,** 16 (13 N. W., 403); **15,** 380 (19 N. W., 502); **21,** 585 (33 N. W., 262).

Secs. 478 to 481 repealed 1875, p. 51.

Secs. 5003 to 5012. "An act to provide for stay of executions and orders of sale. 1875, p. 49. In force February 23.

5003. Hereafter no **stay** of execution or order of sale upon any judgment or decree shall be granted for a longer time than **nine months** from and after the rendition of such judgment or decree.

Stay should be taken within statutory time, but if taken without the time allowed will be good on sufficient consideration. **6,** 446. Principal must join with sureties in bond, else not binding on either. **7,** 419. By taking stay, party waives all error, and is estopped to attack judgment in any way. **11,** 474 (9 N. W., 645).

5004. The order of sale on all decrees for the sale of **mortgaged premises** shall be stayed for the period of nine months from and after the rendition of such decree, whenever the defendant shall, within twenty days after the rendition of such decree, file with the clerk of the court a written request for the same; *Provided*, That if the defendant make no such request within said twenty days, the order of sale may issue immediately after the expiration thereof.

Taking a stay is an appearance and waives prior defects. **28,** 470 (44 N. W., 481). Land contract treated as mortgage, and bond not required for a stay. **29,** 309 (45 N. W., 464). On a judgment foreclosing a mechanic's lien and for sale of building and premises, defendant is not entitled to stay of execution and order of sale on mere request without filing a bond with security. **10,** 589 (7 N. W., 336).

5005. On all **judgments** for the recovery of money only, except those rendered in any court on an appeal or writ of error thereto or against any officer or person or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a **stay of** execution if the defendant therein shall, within twenty days from the rendition of judgment, procure two or more sufficient freehold sureties to enter into a **bond,** acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs, from the time of rendering judgment until paid, as follows: *First*—If the sum for which judgment was rendered, exclusive of costs, does not exceed fifty dollars, three months. *Second*—If the sum for which judgment was rendered, exclusive of costs, exceeds fifty dollars and does not exceed one hundred dollars, six months. *Third*—If the sum for which judgment was rendered, exclusive of costs, exceeds one hundred dollars, nine months.

Stay bond requires two or more sureties; unless surety waives one, insufficient. **7, 14.** Stay bond may be amended. **17,** 20 (22 N. W., 455).

5006. Officers approving stay **bonds** shall require the affidavits of the **signers** of such bonds that they own real estate not exempt from execution, and aside from incumbrance, to the value of twice the amount of the judgment.

5007. **No** proceedings in **error or appeal** shall be allowed **after** such **stay** has been taken, nor shall a stay be taken on a judgment entered as herein contemplated, against one who is surety in the stay of execution.

No appeal shall be allowed after stay of execution. **9,** 122 (2 N. W., 352). Cited, **12,** 580 (12 N. W., 103). See note to 5003 citing **11,** 474 (9 N. W., 645).

5008. The sureties for the stay of execution may be taken and approved by the clerk, and the **bond** shall be **recorded** in a book kept for that purpose, and have the force and **effect** of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter and index the same in the proper judgment docket, as in the case of other judgments.

5009. When the surety is entered after execution issued, the clerk shall immediately notify the **sheriff** of the stay, and he shall forthwith **return** the **execution,** with his doings thereon.

5010. All **property levied on** before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be **relinquished** by the officer upon stay of execution being entered.

5011. At the **expiration of** the **stay** the clerk shall issue a joint **execution** against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein.

Mandamus will lie to compel court to issue execution against the property of both principal and sureties. **21,** 323 (32 N. W., 73).

5012. Where a **stay** of execution has been taken such confessed judgment shall **not release** any **judgment lien** by virtue of the original judgment for the amount then due. The **officer** holding the execution shall **return** thereon what amount was made from the principal debtor, and how much from the sureties.

5013 (482). If execution shall not be sued out within five years from the date of any **judgment** that now is or may hereafter be rendered in any court of record in this state, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become **dormant,** and shall cease to operate as a lien on the estate of the judgment debtor.

Execution issued by clerk district court upon a transcript of a judgment of a justice and by the sheriff levied upon real estate and afterwards, before the sale, returned unsatisfied by order of the creditor in execution, will prevent the judgment becoming dormant. **12,** 17 (10 N. W., 403). A tax cannot be levied to pay a dormant judgment. **25,** 303 (41 N. W., 155); **1,** 294; **15,** 381 (19 N. W., 502).

5014 (483). The **writ** of execution against the property of the judgment debtor, issuing from any court of record in this state, shall **command** the officer to whom it is directed that of the goods and chattels of the debtor he cause to be made the money specified in the writ, and for want of goods and chattels he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages, and costs for which the judgment is entered shall be endorsed on the execution.

29, 119 (45 N. W., 271).

5015 (484). When **two or more writs** of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no **preference** shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to endorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to affect any preferable lien which one or more of the judgments on which execution issued may have on the lands of the judgment debtor.

Executions placed in hands of officer on same day prorate. **17,** 217 (22 N. W., 457). Hour of receipt need not be endorsed on execution from justice or county court. **23,** 743 (37 N. W., 639).

5016 (485). The officer to whom a writ of execution is delivered shall proceed immediately to **levy** the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall endorse on the writ of execution "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable to satisfy the judgment.

While personalty must be sold before realty, latter may be *levied* on before advertisement and sale of former. **29,** 119 (45 N. W., 271). Where judgment creditor accepts from his debtor a note due in nine months, secured by a mortgage, and directs constable to refrain from levy, he cannot make a second levy in six weeks. **24,** 137-8 (38 N. W., 39). As to levy and possession of growing crop. **23,** 744 (37 N. W., 639).

5017 (486). If the officer, by virtue of any writ of execution issued from any court of record in this state, shall levy the same on any **goods** and chattels **claimed by** any **person other than** the **defendant,** it shall be the duty of said officer forthwith to give notice in writing to some justice of the peace in the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the said justice of the peace with a schedule of the property claimed. And it shall be the duty of such justice of the peace immediately upon the receipt of such notice and schedule to make an entry of the same upon his docket, and issue a writ of summons, directed to the sheriff or any constable of the county, commanding him to summon five disinterested men having the qualification of electors, who shall be named in said summons, to appear before him, the said justice, at the time and place therein mentioned, which time shall not be more than three days after the date of said writ, to **try** and determine the **right** of the claimant to the **property** in controversy. And it shall be the duty of the claimant to give two days' notice in writing to the plaintiff or other party for whose benefit such execution was issued and levied as aforesaid, his agent or attorney, if within the county, of the time and place of such trial; and he shall, moreover, prove to the satisfaction of said justice that such notice was given, or that the same could not be given by reason of the absence of the party, his agent or attorney.

Sheriff has no right to institute proceedings for trial of property; **5,** 458. For action in undertaking, see **12,** 160 (10 N. W., 536). See note to section 5469, Civil Code. Cited, **15,** 12 (16 N. W., 758).

5018 (487). The **jury** summoned as aforesaid shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give, according to the evidence. If the jury shall find the right to said goods and chattels, or any part thereof, to be in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such **finding** of the jury, for the claimant, that he recover his costs against the plaintiff in execution, or other party to the same for whose benefit the execution issued, and also that he have restitution of said goods and chattels, or any part thereof, according to the finding of the jury. But if the right of the said goods and chattels, and every part thereof, shall not be in the claimant according to the finding of said jury, then the said justice shall render **judgment** on such finding, in favor of the plaintiff in execution, or other party for whose benefit the same was issued and levied, against said claimant for costs, and award execution thereon. Said justice of the peace, in the taxation of **costs** accruing by reason of such claim and trial, shall allow each juror summoned and sworn the sum of fifty cents; and for the sheriff, constable, or other officer, and witnesses, and for himself, he shall tax such fees as are allowed by law to each respectively, for like services rendered in other cases. Such judgment for the claimant (unless an undertaking shall be executed, as provided in the next section) shall be a justification of the officer in returning "no goods" to the writ of execution, by virtue of which the levy has been made, as to such part of the goods and chattels as were found to belong to such claimant.

If upon trial the jury find against claimant he cannot maintain replevin, but if it find for claimant, plaintiff in execution may tender bond and allow the sale to go on. **5,** 458. See **22,** 767 (36 N. W., 134).

5019 (488). If the jury shall find the property, or any part thereof, to be in the claimant, and the **plaintiff** in execution shall at any time within three days after said trial tender to the sheriff or other officer having such property in his custody on execution, an **undertaking,** with good and sufficient sureties payable to such claimant, in double the amount of the value of such property as assessed by the jury, to the effect that they will pay all damages sustained by reason of the detention or sale of such property, then the sheriff or other officer shall deliver said undertaking to the **claimant,** and proceed to **sell** such **property,** as if no such trial of the right of property had taken place, and shall not be liable to the claimant therefor.

5020 (489). In all cases where a sheriff, coroner, or other officer shall, by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands **unsold,** for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the **defendant** an **undertaking** with security in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution, the full value of said goods and chattels, or the amount of said debt and costs, the undertaking given as aforesaid shall be considered as broken and may be proceeded on as in other cases.

5021 (490). The officer who levies upon goods and chattels by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public **notice** to be given of the time and place **of sale,** for at least ten days before the day of sale. The notice shall be given by advertisement published in some newspaper printed in the county, or in case no newspaper be printed therein, by putting up advertisements in five public places in the county; two advertisements shall be put up in the precinct where the sale is to be held. And where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels, and the plaintiff in such execution may thereupon sue out **another writ** of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold unless the time and place of sale be advertised as hereinbefore provided.

Sufficiency of notice. **8,** 482.

5022 (491). When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the **property** remaining in his hands not sold shall, in his opinion, be **insufficient** to satisfy the judgment, he shall **levy** the same upon the lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

Secs. 492 and 493 repealed 1876, p. 61.

Secs. 5023 to 5027. "An act for the more equitable appraisement of real property under judicial sale." 1875, p. 60.

5023. Whenever, hereafter, execution shall be levied on any lands and tenements, the officer levying the same shall call an inquest of two **disinterested freeholders,** who shall be residents of the county where the lands taken on execution are situated, and administer to them an oath impartially to appraise the interest of the person, or persons, or corporation against whom the execution is levied, in the property so levied upon, and such officer, together with said freeholders, shall **appraise** said interest at its real value in money, and such appraisement shall be signed by such officer and said freeholders, respectively.

The object of an appraisement is to protect the debtor, and if not fairly made will be set aside, **15,** 197 (16 N. W., 842). Appraisers called to value real estate levied upon must appraise the property at its value in money, and deduct the liens therefrom, specifically enumerating each lien and the amount due thereon. It is not sufficient to appraise the interest of the debtor therein. **10,** 421 (6 N. W., 630). Appraisers act judicially; other officers do not. Amount of mortgage under foreclosure should not be deducted to find the interest of the owner. **8,** 481. Return of officer must show that the appraisers were residents of the county in which the premises are situated. Each lot shall be appraised separately. **1,** 409. Presumption is that there are no liens. Failure to notice them not prejudicial. **5,** 259. Failure to appraise land does not render deed void. In a sale of single tract lying in two counties, sheriff must call appraisers from county where decree was rendered. **11,** 307 (9 N. W., 36). Appraisement not jurisdictional **16,** 407 (20 N. W., 277). The provisions of these sections and of sections 4976–7 and 5029 apply to all sales of real estate under the process of the court, whether upon execution or order of sale. **14,** 367 (15 N. W., 711).

5024. That for the purpose of the appraisement mentioned in the last preceding section, the officer and the freeholders therein named shall deduct from the real value of the lands and tenements levied on, the amount of all liens and incumbrances for taxes or otherwise, prior to the lien of the judgment under which execution is levied, and to be determined as hereinafter provided, and which liens and incumbrances shall be specifically enumerated, and the sum thereafter remaining shall be the real value of the interest therein of the person, or persons, or corporation against whom or which the execution is levied.

5025. It shall be the duty of the county clerk, the clerk of the district court, and the county treasurer of the county wherein such levy is made, for the purpose of ascertaining the amount of the liens and incumbrances upon the lands and tenements so levied upon, on application of the sheriff in writing, holding such execution, to certify to said sheriff, under their respective hands and official seals, the amount and character of all liens existing against the lands and tenements levied on, and which are prior to the lien of such levy, as the said liens appear of record in their respective offices. For which certificate and the necessary search therefor, said officer shall receive a fee of two dollars ($2) each, to be paid by the plaintiff in the execution, and taxed as increased costs in the action in which the judgment on which execution was issued was rendered.

Appraisers act judicially. Should find the actual amount due on incumbrances and must specifically enumerate the liens and incumbrances they find against the property. 8, 9. Fee for such service should be entered on fee book. 23, 454 (36 N. W., 756).

5026. The officer holding such appraisement shall forthwith deposit a copy thereof, including his application to the officers enumerated in section three of this act, and their official certificates as in said section provided, in the office of the clerk of the court from which such execution issued, and shall immediately advertise and sell said real estate, lands, and tenements agreeably to the provisions of this act, but in no case shall he sell any such real estate, lands, or tenements for less than two-thirds the appraised value of the interest of the person, persons, or corporation against whom the execution was issued, unless it appear from the appraisement under this act that the liens and incumbrances thereon equal or exceed its real value in money.

No authority to sell until copy of appraisement has been deposited with clerk of court from which execution issued. 9, 256 (2 N. W., 350).

Secs. 492 and 493 repealed 1875, p. 61.

5027. This act shall take effect and be in force from and after its passage, but shall not apply to executions which shall issue upon judgments already entered.

5028 (494). Nothing contained in this and the preceding sections of this title shall in anywise extend to affect the sale of any land by the state, but all lands therein, the property of individuals indebted to the state for any debt of taxes, or in any other manner, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws for such cases made and provided.

5029 (495). In all cases where real estate may hereafter be levied upon, by virtue of any execution or order of sale, and shall have been appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the officer to cause a new appraisement of such real estate to be made, and successive executions or orders of sale may issue at any time in vacation, after the return of the officer "not sold for want of bidders," at the request of the plaintiff or his attorney.

Unless appraisement is vacated there is no authority for making a second one until property has been twice offered for sale, but the fact that sale was made in view of such an appraisement would not be sufficient ground for setting it aside, when, in fact, it conformed to a former and valid one. 14, 502 (16 N. W., 847).

5030 (496). If the property of any clerk, sheriff, coroner, justice of the peace, constable, or any collector of state, county, town, or township tax, shall be levied on, for or on account of any **moneys** that now are, or may hereafter be, by them collected or **received in** their **official capacity,** the property so levied on shall be sold without valuation.

5031 (497). **Lands** and tenements, taken in execution, shall not be sold until the officer cause public notice of the time and place of sale to be given for at least thirty days before the day of **sale,** by **advertisement** in some newspaper printed in the county, or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by putting up an advertisement on the court house door, and in five other public places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such advertisement shall be set aside, on motion, by the court to which the execution is returnable.

Notice must be published for at least thirty days prior to sale. **18,** 139 (24 N. W., 447). Notice first published March 6, not sufficient to warrant sale made on April 5 following. **10,** 78 (4 N. W., 929). Notice published in every issue from March 16 to April 13, good. **28,** 672 (44 N. W., 873). Where notice of sale has been published in newspaper in county, not necessary to post notices. **7,** 459. Real estate appraised and advertised before the return day of the writ may be sold after the return day. **17,** 496 (23 N. W., 342). Sheriff has no authority to resell lands after sale closed and bidder has refused to pay the amount of his bid. Sheriff should bring action against bidder for the amount of his bid. **9,** 256 (2 N. W., 350). Notice published by a party six months before sale, warning public from purchasing, as title to lands had been fraudulently obtained, not sufficient to vacate sale. **29,** 121 (45 N. W., 271). Cited, **14,** 220 (15 N. W., 344).

Sec. 5032. "An act providing for the redemption of real estate from decree and judgment liens." 1875, p. 57. In force February 25.

5032. The **owners** of any real estate against which a decree of foreclosure has been rendered in any court of record, or any real estate levied upon to satisfy any judgment or decree of any kind, may **redeem** the same from the lien of such decree or levy at any time **before** the **sale** of the same shall be **confirmed** by a court of competent jurisdiction, by paying into court the amount of such decree or judgment, together with all interests and costs; and in case the said real estate has been sold to any person not a party plaintiff to the suit, the person so redeeming the same shall pay to said purchaser twelve per cent **interest on** the amount of the **purchase price** from the date of sale to the date of redemption, or deposit the same with the clerk of the court where the decree or judgment was rendered.

A motion to set aside confirmation must state grounds. Powers and duties of court relative to sales of mortgaged premises. **7,** 459. Where party not plaintiff purchases, owner may redeem by paying the purchaser the purchase money with twelve per cent interest thereon from date of sale to date of redemption. **12,** 334 (11 N. W., 325).

5033 (498). If the **court,** upon the return of any writ of execution or order of sale for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has in all respects been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed of such lands and tenements; and the officer on making such sale may retain the purchase money in his hands until the court shall have examined his proceedings as aforesaid, when he shall pay the same to the person entitled thereto, agreeable to the order of the court; **Provided*, That the judge of any district court may **confirm** any such **sale** at any time after such officer has made his return, on motion and ten days' notice to the adverse party or his attorney of record, if made in vacation. When any sale is confirmed in vacation, the judge confirming the same shall cause his order to be entered on the journal by the clerk.

All after * added 1875, p. 38. Court has authority to confirm or set aside sale, but no authority to make conditions. **9,** 168 (2 N. W., 228). Order of confirmation cures defects and cannot be attacked collaterally. **1**, 323; **2**, 156; **14**, 368 (15 N. W., 711); **24**, 370 (38 N. W., 844) Confirmation of sale cures irregularities of sale, but does not settle the question of title. **19**, 630 (28 N. W., 289). Sale not final until confirmed by court. **1**, 321. The title of the purchaser depends entirely on the sale being finally confirmed; until this is done, the rights of the execution debtor are not certainly divested. **10**, 134 (4 N. W., 942). All proceedings must be shown to be regular before court will confirm. **18**, 140 (24 N. W., 447). Confirmation only applies to the regularity of the proceedings, does not cut off equitable grounds of relief. **15**, 199 (16 N. W., 842). After confirmation of sale, made fraudulently, equity will set the same aside, especially so when sale is *ex parte*. **19**, 40 (26 N. W., 614). Judge of district court has authority to confirm sale in vacation. **13**, 233 (13 N. W., 213). A purchaser at judicial sale subjects himself to the jurisdiction of the court and may be summarily required to pay his bid. **18**, 318 (25 N. W., 88). Where it appears that a bidder was deterred from bidding by false representations, sale will be set aside. **28**, 502 (44 N. W., 735). Objections to confirmation must be specific, and raised below in order to be considered in supreme court. **29**, 119, 121-2 (45 N. W., 271). Ten days' notice to defendant if confirmation is made in vacation necessary to a valid sale. **22**, 716 (36 N. W., 151). Court will not consider legality of mortgage where it does not appear that the sale was not made in conformity to law. **9**, 499 (4 N. W., 71). Sheriff's sales on execution are not judicial sales, strictly speaking. **11**, 427 (9 N. W., 473). Sufficient if order refer to officer's return for name of town or city in which the lots sold are located. **24**, 370 (38 N. W., 844).

5034 (499). The **sheriff** or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a **deed** of conveyance of lands and tenements sold as the person or persons against whom such writ or writs of execution were issued could have made of the same, at the time they became liable to the judgment, or at any time thereafter.

Successor to sheriff may make deed, not necessarily his immediate successor. **1**, 323.

5035 (500). The deed shall be sufficient evidence of the legality of such sale and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an **estate** in the premises therein mentioned as was **vested** in the party, at or after the time when such lands and tenements became liable to the satisfaction of the judgment. And such **deed** of conveyance, to be made by the sheriff or other officer, shall **recite** the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be **executed,** acknowledged, and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

Sale conveys the estate subject to whatever incumbrance there is on it, and if there are unpaid taxes the purchaser takes subject to such taxes. **5**, 239. Purchaser at judicial sale takes no higher title than the judgment debtor had. **15**, 664 (19 N. W., 626). **19**, 687 (28 N. W., 319). Recording of deed prior to sale notice of outstanding title. **8**, 435; **11**, 343 (7 N. W., 537). See **25**, 637 (41 N. W., 555). Purchaser at execution sale may compel sheriff to execute a deed. **19**, 687 (28 N. W., 319).

5036 (501). The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a **notice** of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the **fees of** the **printer** for publishing such notice.

5037 (502). Before any **officer** shall be excused from giving the notification mentioned in the last section, he shall **demand** of the party for whose benefit the execution was issued, his agent or attorney (provided either of them resides in the county), the **fees** in said section specified.

5038 (503). All **sales** of lands or tenements under execution shall be **held at** the **court house,** if there be one in the county in which such lands and tenements are situated, and if there be no court house, then at the door of the house in which the district court was last held. No sheriff or other officer making the sale of property, either personal or real, or any appraiser of such property, shall, either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

Neither sheriff nor appraisor can purchase, either directly or indirectly. **19,** 39 (26 N. W., 614). Sale to an appraiser is void as against all persons injured only. **28,** 652 (44 N. W., 996). Purchase by appraiser of one tract, does not invalidate sale to another of different property. **29,** 121 (45 N. W., 271).

5039 (504). If lands and tenements levied on as aforesaid are not sold upon one execution, **other executions** may be issued to sell the lands so levied upon.

5040 (505). In all cases when **two or more executions** shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued shall require the sheriff, or other officer, to make a separate **levy** to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this chapter, be entitled to a **preference,** the choice of such part of the real property of the judgment debtor or debtors as will be sufficient, at two-thirds of the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on to satisfy each execution as will bear the same proportion in value to the whole as the amount due on the execution bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

5041 (506). If the term of service of the sheriff, or other officer, who has made or shall hereafter make sale of any lands and tenements, shall expire, or if the sheriff or other officer shall be absent, or be rendered unable, by death or otherwise, to made a **deed of** conveyance of the same, any **succeeding sheriff** or other officer, on receiving a certificate from the court from which the execution issued, for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court that such sale was fairly and legally made, and on tender of the purchase money, or if the same or any part thereof be paid, then, on proof of such payment and tender of the balance, if any, may execute to the said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law and have the same effect as if the sheriff or other officer who made sale had executed the same.

5042 (507). If, on any **sale** made as aforesaid, there shall be in the hands of the sheriff or other officer **more money than** is **sufficient** to satisfy the writ or writs of execution, with interest and costs, the sheriff or other officer shall, on demand, pay the **balance to** the **defendant** in execution, or his legal representatives.

5043 (508). If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter be reversed, such **reversal** shall **not** defeat or **affect** the **title of** the purchaser or **purchasers;** but, in such case, restitution shall be made by the judgment creditor, of the moneys for which such lands or tenements were sold, with lawful interest from the day of sale.

Purchaser at judicial sale where no supersedeas bond has been filed takes absolute title though purchaser be judgment creditor and though judgment be reversed on appeal. **1,** 248. See **29,** 122 (45 N. W., 271).

5044 (509). No judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied before the expiration of five years next after its rendition, shall operate as a lien upon the estate of any debtor, to the **preference of** any other *bona fide* judgment creditor; but in all cases where judgment has been or may be rendered in the supreme court, and a special mandate awarded to the district court to carry the same into execution, the **lien** of the judgment creditor shall **continue** for **five years** after the first day of the next term of the district court to which such mandate may be directed. Nothing in this section contained shall be construed to defeat the lien of any judgment creditor who shall fail to take out execution and cause a levy to be made as herein provided, when such failure shall be occasioned by appeal, proceedings in error, injunction, or by vacancy in the office of sheriff and coroner, or the inability of such officer, until one year after such disability shall be removed. In all cases where real estate has been or may hereafter be taken on execution, and appraisal, [appraised] and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on application of the plaintiff, to set aside such appraisement and order a new one to be made, or to set aside such levy and appraisement and award a new execution to issue, as the case may require.

Original section allowed judgment to run one year only, without execution. Amended 1873, G. S., p. 613. Cited **5**, 46. **12**, 17 (10 N. W., 403). See note to section 5013. **15**, 381 (19 N. W., 502).

5045 (510). The sheriff or other officer to whom any **writ** of execution shall be directed, shall **return** such writ to the court to which the same is returnable, within sixty days from the date thereof.

Property may be sold after the return day. **7**, 226. Presumptions as to return. **29**, 120-1 (45 N. W., 271).

5046 (511). In all cases where **judgment** is rendered in any court of record within this state, **upon** any other **instrument of writing,** in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound signed the same as **surety** or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the **principal** debtor, but for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail. In all cases the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

Cashier of bank no authority to release surety. See **5**, 538. Payment of judgment by endorser of note sued on, is a satisfaction of judgment, and assignment thereof by plaintiff to paying endorser, will not entitle him to levy on land of a co-defendant. **27**, 756-7 (44 N. W., 25).

5047 (512). Each freeholder, summoned to appraise real estate under the provisions of this chapter, shall be allowed and receive for his services the sum of fifty cents, for each day he may be so engaged as such **appraiser,** to be collected on the execution, by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisement. And when any freeholder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace of the precinct in which such freeholder resides, forfeit and pay the sum of fifty cents for every such neglect, unless he can render a reasonable excuse. Such sum shall be collected by said justice, and paid into the county treasury for the use of the county.

5048 (513). If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest and return a copy thereof forthwith to the clerk's office; or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return, that he has levied and made the amount of the debt, damages, and costs; or shall refuse or neglect on demand to pay over to the plaintiff, his agent, or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in section four hundred and ninety-eight; or shall neglect or refuse, on demand made by the defendant, his agent, or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, such sheriff or other officer shall, on motion in court and two days' notice thereof in writing, be amerced in the amount of said debt, damages, and costs, with ten per centum thereon, to and for the use of said plaintiff or defendant, as the case may be.

County court has authority to amerce an officer (sheriff) for failing to return an execution issued by said court and delivered to him. The proper mode of reviewing an order of amercement is by petition in error. **11,** 472 (9 N. W., 642). The statute makes the sureties on the sheriff's official bond liable in an action upon a judgment of amercement; and action may be brought in county where amercement was had, although none of the defendants reside in such county. **14,** 533 (16 N. W., 827). This gives no additional rights, but merely a more expeditious way of enforcing a pre-existing right. **18,** 227 (24 N. W., 689). No ground of amercement shown under the evidence. **27,** 812 (44 N. W., 107).

5049 (514). If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent, or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

5050 (515). When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per centum thereon.

5051 (516). When execution shall be issued in any county in this state, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

5052 (517). No sheriff shall forward by mail any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent, or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail at least sixty days prior to the first day of the term at which such motion shall be made. All **amercements**, so procured, shall be **entered** on the record of the court, and shall have the same force and effect as a judgment.

5053 (518). Each and every **surety** of any sheriff or other officer may be **made a party** to the judgment as rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer, against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer by attachment, at his election.

See **29,** 525 (45 N. W., 780).

5054 (519). In cases where a **sheriff** or other officer may be **amerced,** and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and **collect** the amount of said **judgment** in the name of the original plaintiff, for his own use.

Sec. 520 repealed 1875, p. 88.

HOMESTEAD AND OTHER EXEMPTIONS.

5055 (521). All **heads of families** who have neither lands, town lots, or houses subject to exemption as a homestead, under the laws of this state shall have exempt from forced sale on execution the sum of five hundred dollars in **personal property.**

A party moving into this state with intention of residing, even though he has no dwelling, is entitled to his exemption. **12,** 628 (12 N. W., 94). See **13,** 266 (13 N. W., 282). Exempt property may be claimed at any time before it is sold. **12,** 627 (12 N. W., 94); **13,** 206 (13 N. W., 176). Resident alien entitled to exemption **2,** 9. Debtor who owns house which he occupies as homestead, is not entitled to exemption, although it is incumbered for all it is worth. **13,** 321 (14 N. W., 409). Nor where he lives upon land though he has not proved up. **7,** 184. Any interest in land bars this claim. **17,** 352 (23 N. W., 509). Cannot have both a home and $500. **17,** 470 (23 N. W., 364). Partnership property not exempt. **17,** 136. Members of partnership not entitled to exemptions out of partnership assets. **3,** 262. Exempt property under an *attachment* cannot be released under these sections, but may be released by an order of the justice. **12,** 426 (11 N. W., 868). This decision has been overruled. **26,** 243 (41 N. W., 1002); **27,** 501 (43 N. W., 361). Attempted transfer of property to wife, not a waiver of exemption by husband. **27,** 501 (43 N. W., 361). Will be liberally construed; claimant can replevin or sue for value; is not concluded by order holding the attachment good, etc. **26,** 242 (41 N. W., 1002). Debtor to avail himself of exemption must file inventory. **21,** 543 (32 N. W., 599). Referred to, **12,** 412 (11 N. W., 861).

5056 (522). Any person desiring to avail himself of the exemption as provided for in the preceding section, must file an **inventory,** under oath, in the court where the judgment is obtained, or with the officer holding the execution, of the whole of the personal property owned by him or them at any time before the sale of the property; and it shall be the duty of the officer to whom the execution is directed to call to his assistance three disinterested **freeholders** of the county where the property may be, who, after being duly sworn by said officer, shall **appraise** said property at its cash value.

5057 (523). Upon such inventory and appraisement being completed, the **defendant** in execution, or his authorized agent, may **select** from such inventory an **amount** of such property, not exceeding, according to such appraisal, the amount of value herein **exempted,** but if neither such defendant nor his agent shall appear and make such selection, the officer shall make the same for him.

5058 (524). **Nothing** in this subdivision shall be considered as **exempting** any real or personal property **from** levy and sale for **taxes.**

Secs. 525 to 528 repealed 1875, p. 48.

5059 (529). **Nothing** in this subdivision shall be considered as **exempting any** real estate **from taxation** or sale for taxes.

5060 (530). **[Chattels exempt.]**—No property hereinafter mentioned shall be liable to attachment, execution, or sale, on any final process issued from any court in this state, against any person being a resident of this state and the head of a family. *First*—The family Bible. *Second*—Family pictures, school books, and library for the use of the family. *Third*—A seat or pew in any house or place of public worship. *Fourth*—A lot in any burial ground. *Fifth*—All necessary wearing apparel of the debtor and his family. All beds, bedsteads, and bedding necessary for the use of such family. All stoves and appendages put up or kept for the use of the debtor and his family, not to exceed four. All cooking utensils, and all other household furniture not herein enumerated, to be selected by the debtor, not exceeding in value one hundred dollars. *Sixth*—One cow, three hogs, and all pigs under six months old, and if the debtor be at the time actually engaged in the business of agriculture, in addition to the above, one yoke of oxen, or a pair of horses in lieu thereof; ten sheep, and the wool therefrom, either in the raw material or manufactured into yarn or cloth; the necessary food for the stock mentioned in this section for the period of three months; one wagon, cart, or dray, two plows, and one drag; the necessary gearing for the team herein exempted; and other farming implements not exceeding fifty dollars in value. *Seventh*—The provisions for the debtor and his family necessary for six months' support, either provided or growing, or both, and fuel necessary for six months. *Eighth*—The tools and instruments of any mechanic, miner, or other person, used and kept for the purpose of carrying on his trade or business. The library and implements of any professional man. All of which articles hereinbefore intended to be exempt, shall be chosen by the debtor, his agent, clerk, or legal representative, as the case may be.

Debtor is entitled to these exemptions in addition to the $500 allowed by section 5055. **10**, 434 (6 N. W., 766). Team of mules, wagon, and harness, exempt. Officer must call appraisers. **6**, 92. Wife can hold exempt property when husband has absconded. **10**, 117 (4 N. W., 934).

5061 (531). Nothing in this chapter shall be so construed as to exempt any property in this state from execution or attachment for clerks', laborers', or mechanics' **wages** for **money due** and owing **by** any **attorney** at law for money or other valuable consideration received by said attorney for any person or persons, * nor shall anything in this chapter be construed to exempt from execution or attachment property of the value of more than five hundred dollars ($500) for any debt contracted by any person in the purchase of the actual **necessaries** of life for himself or family, or for any person or persons who were at the time of contracting such debt dependent upon such person purchasing the same for support; *Provided*, That where the debt contracted therefor shall be deemed the debt of both husband and wife; *And provided further*, That nothing herein contained shall be construed to exempt in the aggregate more than five hundred dollars worth of personal property to both husband and wife.

Amended 1869, p. 67. All after * added 1887, p. 649. One laborer cannot garnishee another for money earned within sixty days. **22**, 190 (34 N. W., 364).

Sec. 5062. "An act to exempt laborers', mechanics', and clerks' wages in the hands of employers, from execution, attachment, and garnishee process." 1869, p, 170. In force February 15.

5062. The **wages** of laborers, mechanics, and clerks who are heads of families, in the hands of those by whom such laborers, mechanics, or clerks may be employed, both before and after such wages shall be due, shall be **exempt** from the operation of attachment, execution, and garnishee process; *Provided*, That not more than sixty days' wages shall be exempt; *Provided further*, That nothing in this act shall be so construed as to protect the wages of persons who have or are about to abscond or leave the state from the provisions of law now in force upon that subject; *Provided further*, That nothing in this act shall be so construed as to permit the attachment of sixty days' wages in the hands of the employer.

Applies to heads of families who are nonresidents of the state. **19**, 180 (27 N. W., 90). Exempt wages taken by creditor may be recovered back. **17**, 205 (22 N. W., 418). Wages of laborer for sixty days exempt. Either party may bring to the attention of the court facts showing money is exempt. If garnishee pay, action may be maintained against him for recovery. Exempt money not subject to fraudulent alienation. **22**, 757 (36 N. W., 139). A foreign corporation cannot be garnisheed in this state. **19**, 175 (27 N. W., 90). Justice cannot be compelled to release exempt wages from garnishment after case is taken to district court. **27**, 56 (42 N. W., 762). Duty of garnishee to set up in garnishee answer debtor's exemptions if he knows them. **19**, 247 (27 N. W., 103).

Sec. 5063. "An act to exempt from levy and sale on execution or attachment all pension money, and property purchased and improved exclusively therewith, of the soldiers, sailors, and marines who were disabled in the service of the United States." 1887, p. 656. In force July 1.

5063. That in addition to the exemptions now provided for by the code of civil procedure, there shall also be exempt from levy and sale upon execution or attachment, to every resident of the state of Nebraska, who became disabled in the service of the United States as a soldier, sailor, or marine, all pension money hereafter received and all property hereafter purchased and improved exclusively therewith, not exceeding two thousand dollars ($2,000) in value, of and belonging to such soldier, sailor, or marine.

Secs. 5064 to 5067. "An act to provide for the better protection of the earnings of laborers, servants, and other employes of corporations, firms, or individuals engaged in interstate business." 1889, p. 369. In force March 29.

5064. That it be and is hereby declared unlawful for any creditor of, or other holder of any evidence of debt, book account, or claim of any name or nature against any laborer, servant, clerk, or other employee, of any corporation, firm, or individual, in this state, for the purpose below stated, to sell, assign, transfer, or by any means dispose of any such claim, book account, bill, or debt of any name or nature whatever, to any person or persons, firm, corporation, or institution, or to institute, in this state or elsewhere, or prosecute any suit or action for any such claim or debt against any such laborer, servant, clerk, or employee by any process seeking to seize, attach, or garnish the wages of such person or persons earned within sixty days prior to the commencement of such proceeding, for the purpose of avoiding the effect of the laws of the state of Nebraska concerning exemptions.

5065. That it is hereby declared unlawful for any person or persons to aid, assist, abet, or counsel a violation of section one of this act for any purpose whatever.

5066. In any proceeding, civil or criminal, growing out of a breach of sections one or two of this act, proof of the institution of a suit, or service of garnishment summons by any persons, firm, or individual, in any court of any state or territory other than this state, or in this state, to seize by process of garnishment or otherwise, any of the wages of such persons as defined in section one of this act, shall be deemed *prima-facie* evidence of an evasion of the laws of the state of Nebraska and a breach of the provisions of this act on the part of the creditor or resident in Nebraska causing the same to be done.

5067. Any persons, firm, company, corporation, or business institution guilty of a violation of sections one or two of this act shall be liable to the party injured through such violation of this act, for the amount of the debt sold, assigned, transferred, garnished or sued upon, with all costs and expenses and a reasonable attorney's fee, to be recovered in any court of competent jurisdiction in this state; and shall further be liable by prosecution to punishment by a fine not exceeding the sum of two hundred dollars and costs of prosecution.

CHAPTER II.—PROCEEDINGS IN AID OF EXECUTION.

5068 (532). Where a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any interest which he may have in any banking, turnpike, bridge, or other joint stock company, or any interest he may have in any money, contracts, claims, or choses in action, due or to become due to him, or in any judgment or decree, or any money, goods, or effects which he may have in possession of any person, body politic, or corporate, shall be subject to the payment of such judgment by proceedings in equity, or as in this chapter prescribed.

An allegation in petition "that defendant has no property whatever subject to sale on execution" is sufficient. **18**, 39 (24 N. W., 383). Cited, **12**, 621 (12 N. W., 96).

5069 (533). When an execution against the property of a judgment debtor, or one of the several debtors in the same judgment, is issued to the sheriff of a county where he resides, or, if he do not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order from a probate judge or a judge of the district court of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

Must obtain judgment before order had. **9**, 485 (4 N. W., 67). Judgment must be rendered and execution issued and returned unsatisfied before creditor's bill will lie. **3**, 387.

5070 (534). After the issuing of an execution against property, and upon proof by affidavit of the judgment creditor or otherwise, to the satsfaction of the district court or a judge thereof, or a probate judge of the county in which the order may be served, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment creditor to appear at a time and place in said county to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are prescribed in this chapter.

5071 (535). Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may, upon proof to his satisfaction, by affidavit of the party or otherwise, that there is danger of the debtor leaving the state or concealing himself to avoid the examination herein mentioned, issue a warrant, requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such warrant can be issued only by a probate judge, or a judge of the district court of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may be examined on either side, and if on such examination it appear that there is danger of the debtor leaving the state, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking, in such sum as the judge may prescribe, with one or more sureties, that he will from time to time attend for examination before the judge or referee as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge, as for a contempt.

5072 (536). No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

5073 (537). After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution.

5074 (538). After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, within the county in which such person or corporation may be served with the order to answer, and answer concerning the same. The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

5075 (539). Witnesses may be required, upon the order of the judge, or by a subpœna issued by the clerk of the district court, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

5076 (540). The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge. If before a referee, the examination must be taken by the referee and certified by the judge. All examinations and answers before a judge or referee under this chapter must be on oath, but when a corporation answers, the answer must be on the oath of an officer thereof.

5077 (541). The judge may order any property of the judgment debtor not exempt by law, in the hands of either himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, where it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

5078 (542). The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner, and with the like authority as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

5079 (543). If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such receiver; if any other person shall be appointed receiver, he shall give a written undertaking in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge his duties of receiver, and he shall also take an oath to the same effect before acting as such receiver. The undertaking mentioned in this section shall be to the state of Nebraska, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

5080 (544). The judge or referee, acting under the provisions of this chapter, shall have power to continue his proceedings from time to time until they are completed.

5081 (545). The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him, to report the evidence of facts.

5082 (546). If any person, party, or witness disobey an order of the

judge, or referee, duly served, such person, party, or witness may be **punished** by the judge as for contempt, *and if a party, he shall be committed to the jail of the county wherein the proceedings are pending, until he shall comply with such order; or, in case he has, since the service of such order upon him, rendered it impossible for him to comply therewith, until he has restored to the opposite party what such party has lost by such disobedience, or until discharged by due course of law.

All after * added 1875, p. 39.

5083 (547). The **orders** to judgment debtors and witnesses, provided for in this chapter, shall be **in writing and** signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be **filed** with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same.

5084 (548). The judge shall allow to clerks, sheriffs, referees, receivers, and witnesses such **compensation** as is allowed for like services in other cases, to be **taxed** as costs in the case, and shall enforce by order the collection thereof from such party or parties as ought to pay the same.

5085 (549). The **probate judge** shall be allowed for his services, under this chapter, the sum of three dollars in each case, and such **fees** as are allowed by law to clerks of the district for similar services.

CHAPTER III.—EXECUTIONS AGAINST THE PERSON.

5086 (550). An execution against the person of a judgment debtor shall **require** the officer to arrest such debtor and commit him to the jail of the county until he pay the judgment, or be discharged according to law.

5087 (551). An **execution** against the person of the debtor may be **issued** upon any judgment for the payment of money. *First*—**When** the judgment debtor has removed, or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment. *Second*—When he has property, rights in action, evidences of debt, or some interest or stock in some corporation or company, which he fraudulently conceals with like intent. *Third*—When he has assigned or disposed of all or any part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken into execution. *Fourth*—When he fraudulently contracted the debt, or incurred the obligation upon which the judgment was rendered. *Fifth*—When he was arrested on an order before judgment, and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made.

5088 (552). An **execution** against the person of the debtor can be issued only when the same is **allowed** by the supreme court, district court, or probate court, or any judge of either, upon being satisfied, by the affidavit of the judgment creditor, or his attorney, and such other evidence as may be presented, of the existence of one more of the particulars mentioned in the last preceding section.

5089 (553). A **justice of** the **peace** may issue an **execution** against the person of a judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by the like affidavit and evidence.

5090 (554). In all cases in which the judgment **debtor** was **arrested before judgment,** and where the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course.

5091 (555). Any **person taken** in execution as aforesaid shall be **discharged** by delivering or setting off to the officer serving the same, if issued from a court of record, real or personal property, if issued from a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ issued.

5092 (556). The **death of** a **person under arrest** in an action does not satisfy the judgment, but an execution may issue thereon, as if the arrest had been made.

5093 (557). If a **person imprisoned** under an order of arrest made before judgment is **not charged** in execution within ten days after judgment, he shall be discharged from such imprisonment.

Cited, **24,** 69 (38 N. W., 28).

5094 (558). In cases of commitment under this chapter, or upon arrest before or after judgment in civil cases, the person imprisoned, in case of his **inability to** perform the act **or endure** the **imprisonment** may be discharged from imprisonment by the court or judge committing him, or the court or judge thereof in which the judgment was or might be rendered, on such terms as may be just.

CHAPTER IV.—EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.

5095 (559). If the execution be for the delivery of the possession of real property, it shall **require** the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may at the same time require the officer to satisfy any costs or damages recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered, and for want of such goods and chattels, then out of the lands and tenements, and in this respect it shall be deemed an execution against the property.

5096 (560). When the **judgment** is not for the recovery of money or real property, the same may be **enforced** by **attachment,** by the court rendering the judgment, upon **motion** made, or by a rule of the court upon the defendant; but in either case, **notice** of the motion, or a service of a copy of the rule shall be made on the defendant a reasonable time before the order of attachment is made.

CHAPTER V.—JUDGMENT BEFORE JUSTICES OF THE PEACE.

5097 (561). In all cases in which judgments shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered may file a **transcript** of such judgment in the office of the **clerk** of the district court of the county in which the judgment was rendered, and thereupon the clerk shall, on the day on which the same shall be **filed,** enter the case on the execution docket, together with the amount of the judgment and the time of filing the transcript.

All proceedings after transcript filed in district court should be had in district court. **20,** 314 (30 N. W., 61). Judgment entered and transcript filed in district court against W. G. & J. L. Bowman sufficient to attach lien. **2,** 285. If paid, though under protest, to clerk of district court of another county, where transcript has first been filed, amount cannot be recovered back. **24,** 95 (38 N. W., 32). Judgment of justice cannot be transcripted directly to another county. **18,** 439 (25 N. W., 582). But judgment of county court can. **18,** 562 (26 N. W., 253). Cited, **12,** 17 (10 N. W., 403).

5098 (562). Such judgment, if the **transcript** shall be **filed** in term time, shall have a **lien** on the real estate of the judgment debtor, from the day of the filing; if filed in vacation, as against the judgment debtor, said judgment shall have a lien from the day of the filing, and as against subsequent judgment creditors from the first day of the next succeeding term, in the same manner, and to the same extent as if the judgment had been rendered in the district court.

5099 (563). **Execution** may be **issued thereon** to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same as other executions; and in case of sale of real estate, his proceedings shall be examined and approved by the court, as in other cases.

Cited, **12,** 18 (10 N. W., 403).

5100 (564). The **justice** of the peace shall **certify** on the transcript the **amount,** if any, **paid** on such judgment. The **costs** of the transcript, the filing of the same, and the entry of the case on the execution docket, shall be paid by the party filing the same, and not be taxed to the other party.

TITLE XV.—MISCELLANEOUS PROCEEDINGS.

CHAPTER I.—OFFER TO COMPROMISE.

5101 (565). The defendant in an action for the recovery of money only, may, at any time **before** the **trial,** serve upon the plaintiff, or his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant or his attorney, within five days after the offer is served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file an **acceptance,** with a copy of the offer verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and **judgment** shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the **offer** shall be deemed **withdrawn,** and shall not be given in evidence, or mentioned on the trial. If the defendant fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

Offer must be made in open court or notice served to carry subsequent costs. **18,** 532 (26 N. W., 363). Does not apply to *ad quod damnum* case. **17,** 423 (23 N. W., 9).

5102 (566). The making of an **offer** pursuant to the provisions contained in the foregoing section, shall **not be a cause for a continuance** of an action, or a postponement of a trial.

CHAPTER II.—SUBMITTING A CONTROVERSY.

5103 (567). Parties to a question which might be the subject of a civil action, may, **without action,** agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, and determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment as if an action were pending.

See **21,** 647 (33 N. W., 426); **22,** 35 (33 N. W., 709; **22,** 615 (35 N. W., 941).

5104 (568). The case, the submission, and the judgment shall constitute the **record.**

5105 (569). The **judgment** shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

CHAPTER III.—OFFER TO CONFESS JUDGMENT.

5106 (570). **After** an **action** for the recovery of money is **brought,** the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

To carry subsequent costs an offer must be made in open court or served upon the opposite party. **18,** 532 (26 N. W., 363). Does not apply to *ad quod damnum* case. **17,** 423 (23 N. W., 9).

5107 (571). **Before** any **action** for the recovery of money is **brought** against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

CHAPTER IV.—MOTIONS AND ORDERS.

5108 (572). A **motion** is **an application for** an **order** addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein.

Motion based on same grounds as a previous one cannot be filed without leave of court, and should not be allowed except for sufficient cause. **24,** 382 (38 N. W., 863).

5109 (573). **Several objects** may be **included** in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.

5110 (574). Where **notice** of a motion is required, it must be in writing, and shall **state** the names of parties to the action or proceeding in which it is to be made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing the notice shall state that fact. It shall be served a reasonable **time** before the hearing.

5111 (575). **Notices** of motions mentioned in this chapter may be **served** by a sheriff, coroner, or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.

5112 (576). The **service** of a notice shall be made as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees.

5113 (577). **Motions to strike** pleadings and papers **from** the **files** may be made with or without notice, as the court or judge shall direct.

Motion to strike part of the records from the files will not be entertained by the supreme court **3,** 187. Motion to strike part of a petition from the files denied. **9,** 209 (2 N. W., 464).

5114 (578). Every direction of a court or judge made, entered in writing and not included in a judgment, is an **order.**

5115 (579). **Orders** made **out of court** shall be forthwith **entered** by the clerk in the journal of the court, in the same manner as orders made in term.

TITLE XVI.—Error in Civil Cases.

CHAPTER I.—PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS AND ORDERS IN COURTS OF APPELLATE JURISDICTION.

5116 (580). A judgment rendered, or final order made, by a probate court, justice of the peace, or any other **tribunal,** board, or officer exercising judicial functions, and **inferior** in jurisdiction **to** the **district** court, may be reversed, vacated, or modified by the district court.

Error appearing upon the record of the county court may be reviewed by the district court. **7,** 128. An order of the county court allowing an account against an estate may be reviewed on error in district court. **10,** 333 (6 N. W., 413). The decisions of the county superintendent of schools may be appealed from. **25,** 407 (41 N. W., 256). Cited, **27,** 488 (43 N. W., 252).

5117 (581). An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a **final order** which may be vacated, modified, or reversed, as provided in this title.

An order requiring an attorney to pay money alleged to have been collected by him into court "for the use of the plaintiff, and in default that execution issue therefor," is a final order. **14,** 456 (16 N. W., 480). Order discharging an attachment is a final order and may be reviewed. **26,** 150 (41 N. W., 993). See **26,** 247 (41 N. W., 1098). An order discharging a garnishee in a special proceeding is a final order. **12,** 322 (11 N. W., 300). Application to modify decree of divorce is final order. **19,** 584 (27 N. W., 646). An order of the district court vacating its own judgment during the term at which it was rendered is not a final order. **14,** 454 (16 N. W., 474). A verdict that defendant recover of plaintiff judgment upon the verdict of the jury for his costs, taxed at $67.93, not final judgment. **5,** 195. An order of the district court sustaining a motion to strike a petition from the files is not a final order from which error may be taken. **22,** 167 (34 N. W., 348). An order of district court granting a new trial is not a final order and not reviewable. **16,** 575 (20 N. W., 873). Nor is a finding that the allegations of the petition are true. **16,** 666 (21 N. W., 454). Overruling of objections to jurisdiction is not. **29,** 433 (45 N. W., 618). An order for temporary alimony is not a final order. **18,** 463 (25 N. W., 623). An order dissolving a temporary injunction not a final order. **1,** 311; **8,** 17. Order appointing a receiver is final. **29,** 683 (46 N. W., 152).

5118 (582). A judgment rendered, or **final order** made, **by** the **district court,** may be reversed, vacated, or modified by the supreme court, for errors appearing on the record.

Proceeding in error must be commenced within one year from rendition of judgment. **8,** 147. All defendants in a joint judgment are necessary parties to proceedings in error. **29,** 621 (46 N. W., 91). It is only for errors appearing on the record that a judgment of district court can be reversed. **6,** 418. In divorce case, wherein no motion for new trial was made, and more than six months had elapsed since decree, it was held that none of the errors assigned would be considered, the sole question being, was the petition sufficient to sustain the judgment? Equity cases may be taken to supreme court on error or on appeal. When taken on appeal, no motion for a new trial is necessary; but when taken on error, the same proceedings are necessary as in law cases. **12,** 210 (10 N. W., 713). A mandamus may be reviewed on error. **19,** 151 (26 N. W., 723).

Sec. 583 repealed 1877, p. 14.

5119 (584). The **proceedings to obtain** such **reversal,** vacation, or modification shall be by petition entitled **"petition in error,"** filed in a court having power to make such reversal, vacation, or modification, setting forth the errors complained of, and thereupon a **summons** shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be returnable on or before the first day of the next term of court, if issued in vacation, and twenty days before the commencement of the term; if issued in term time, or within twenty days before the commencement of the term, it shall be returnable on a day named in said summons. In all cases in the supreme court, if a case be docketed twenty days or more before the next succeeding term it shall stand for

hearing at said term. If less than twenty days intervene the cause shall not stand for trial, except by consent of all the parties thereto, until the second term after the docketing of said cause, except causes brought before the court in the exercise of its original jurisdiction.

Amended 1885, p. 375. Attorney of record may make voluntary appearance of his clients without service of summons in error. **1,** 325. No jurisdiction acquired without service of summons in error. **24,** 142 (37 N. W., 926). Summons cannot issue until after petition in error is filed. **29,** 133 (45 N. W., 276); **1,** 10. Not necessary that a case be docketed fifteen days in case of *habeas corpus*. **21,** 555 (32 N. W., 594). Summons must be *issued* within one year from date of final judgment or order, but may be *served* afterward. **10,** 333 (6 N. W., 413). An *alias* summons in proceedings in error issued more than a year from date of final order is too late to be of any effect. **13,** 231 (13 N. W., 212); **13,** 282 (13 N. W., 404). When publication is necessary it must be made in Lancaster county. **12,** 342 (11 N. W., 431). By going to supreme court on error, objection to jurisdiction over person is waived. **17,** 443 (23 N. W., 339). Petition in error may be amended. **13,** 201 (13 N. W., 208). Every case submitted to supreme court should contain a transcript of the pleadings constituting the issue tried in the district court; otherwise the judgment will be affirmed. **14,** 262 (15 N. W., 329). Record is sole evidence of proceedings below. **27,** 219 (42 N. W., 1028). Supreme court obtains jurisdiction only by petition in error. **1,** 10. In law cases, to obtain the review of an error it must have been assigned in a motion for a new trial. **28,** 500 (44 N. W., 485); **9,** 96 (2 N. W., 345). All parties to a judgment are necessary in a petition to reverse it. **21,** 474 (32 N. W., 303). The right of the plaintiff to a decision of the questions presented by the petition in error does not depend upon either a bill of exceptions or a motion for a new trial. **14,** 456 (16 N. W., 480). Proceedings in error will not be dismissed on the ground that the motion for new trial was not made in time; nor for the reason that bill of exceptions was not settled in time. **14,** 430 (16 N. W., 472). Mistake of fact occurring at time not incorporated in bill of exceptions not sufficient ground to set aside judgment of supreme court and to grant a new trial. Under constitution, supreme court can only reverse, vacate, or modify a judgment rendered by district court for errors appearing on the record. **6,** 253. Aggrieved party must seek relief at hands of court where error occurred before he can be heard in a court of error unless error complained of be a jurisdictional one. **11,** 388 (9 N. W., 557); **4,** 415; **11,** 414 (8 N. W., 391); **9,** 96 (2 N. W., 345). Ruling of court on admission of evidence must be presented in motion for new trial before it can be assigned as error. Assignment "that court erred in rejecting evidence offered by plaintiff" is too indefinite unless all the evidence excluded ought to have been admitted. **11,** 145 (7 N. W., 751). Exception must be taken to ruling on motion for new trial. **11,** 436 and 438 (4 N. W., 316, and 9 N. W., 573). To make affidavits used to impeach an award of arbitrators apart of the record they must be embodied in a bill of exceptions. **14,** 492 (17 N. W., 113); **27,** 218 (42 N. W., 1028); **29,** 322 (45 N. W., 466). Where an exception is duly taken to the admission of illegal testimony, it is not waived by cross-examining the witness respecting it. **14,** 240 (15 N. W., 341). An assignment in error, "that the court erred in admitting the testimony" of the witnesses (naming them), when objection was made to only a portion of such testimony, is too indefinite to be noticed. **10,** 518 (7 N. W., 280). An assignment of error "that the court erred in the instructions given to the jury" is too indefinite to be considered unless the whole charge be bad. **10,** 443 (6 N. W., 764); **11,** 144 (7 N. W., 751). Where, in action of ejectment, defendant is beaten and then asks for and obtains judgment for taxes paid by him on the premises, and receives the same, he is estopped to have a review of the original judgment on error. **12,** 446 (11 N. W., 877). To bring question of removal to federal court before supreme court, objections to judgment below should be preserved in the bill of exceptions. Certificates of clerk of circuit court of United States not available. **4,** 415. Where judgment of justice of the peace is taken to district court and reversed, as an independent action, the sole object of which is to vacate or modify the judgment against which it is directed. The judgment of reversal is a final judgment which can be reviewed only by a petition in error. **5,** 241. See **5,** 368; **8,** 151; **24,** 173 (38 N. W., 816).

5120 (585). The **summons** mentioned in the last section shall, upon the written precipe of the plaintiff in error, or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ **issue** to a foreign county, the sheriff thereof may **return** the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issuing or service of the summons.

Summons must be issued but need not be served within one year. **28,** 790 (44 N. W., 1135). Where there are several attorneys, service on one of them is sufficient. **28,** 470 (44 N. W., 487). Justice has no authority to appoint a person to serve summons from supreme court. **13,** 282 13 N. W., 404).

5121 (586). The plaintiff in error shall file with his petition a **transcript** of the proceedings containing the final judgment or order sought to be reversed, vacated, or modified.* **No** written or printed **abstract** or any copy of an abstract of the record shall be **required** in any case in the supreme court of this state. This act shall apply to cases now pending in the supreme court.

Amended 1885, p. 376, so as to require abstracts of the record; this requirement abolished 1887, p. 651. All before * constituted original section. Record should show when, where, and before what court proceedings took place. **2,** 171. Only such matter should be included in the transcript as is necessary to a correct understanding of the case. **13,** 200 (13 N. W., 172); **24,** 492 (39 N. W., 419). Transcript must be filed with petition in error. **1,** 10. Should contain only enough for a full understanding of the case. **1,** 106; **1,** 325; **1,** 363; **2,** 10. Evidence not properly in record stricken out on motion. **1,** 181. Judicial power of supreme court limited to questions presented by transcript of the records of the court below. **2,** 19. Notes of clerk not part of record. **2,** 67. Judgment will not be reversed unless error affirmatively appears of record. **21,** 183 (31 N. W., 672). In order to predicate error upon the refusal of a trial court to permit supplemental pleading to be filed, the paper, or substance of it, must be made a part of the record. **21,** 313 (31 N. W., 918). Cited on motion to strike transcript from the files. **12,** 523 (12 N. W., 3). In a case presented upon transcript alone, instructions presumed to have been correct, if applicable to any state of facts. **27,** 102 (42 N. W., 920); **27,** 245 (42 N. W., 1034).

5122 (587). Judges of probate courts, **justices** of the peace, and other judicial tribunals having no clerk, **and clerks** of every court of record shall, upon request and being paid the lawful fees therefor, **furnish** an authenticated **transcript** of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

Secs. 5113 to 5126. "An act to authorize the use of original bills of exception and testimony preserved in equity cases, and making up transcripts and record of cases and proceedings at law and in equity, on removal thereof to the supreme court, and to provide for the costs incidental thereto." 1881, p. 204. In force March 1. (Secs. 1, 2, and 4 amended so as to authorize use of original bills in law cases. 1885, p. 377.)

5123. That in all cases or **proceedings** now pending or hereafter to be brought **in** any district court of this state, as well as in all cases or proceedings that have been finally adjudicated in any of said courts within six months next prior to the date of the passage of this act, which it is sought or desired to remove to the **supreme court** of this state, on proceedings in error, or by appeal in equity in the manner now prescribed by law, it shall not be necessary to copy the bill, or bills of exception, or the deposition, testimony, and proof in cases that have been preserved in form similar to bills of exception or otherwise, as contemplated by an act passed March 3, 1873, entitled "An act to provide for appeals in actions in equity," taken or used in any such case or proceedings into the transcript or record for the supreme court, but such **original bills of exception** and testimony in equity and cases at law so as aforesaid preserved, shall be, on the request of any party desiring to so prosecute such case or proceeding to the supreme court, attached to the transcript or record of such other parts of the record in the case or proceeding as may be desired by such party, and the transcript or record for the supreme court, so made up, shall be **received** in all respects as if the said bill or bills of exceptions or depositions, testimony, and proof in equity cases so as aforesaid properly preserved were copied into such transcript or record for the supreme court.

Supreme court cannot correct, but will remand where errors are shown. **27,** 706 (43 N. W., 422). Bill not allowed or certified to may be stricken from files of supreme court on motion. **27,** 556 (43 N. W., 346). Stipulation of facts will not take place of bill. **29,** 219 (45 N. W., 626.

5124. And it is further enacted that when the original **bill** or bills of exceptions or testimony in equity and law cases, is so as aforesaid made a part of a transcript or record for the supreme court, the **clerk** shall state such fact in his **certificate** thereto, and omit to certify that the same have been copied into such record or transcript.

Clerk must certify that it is the original bill. **17,** 641 (24 N. W., 213). Must be certified properly or will be quashed. **17**, 520 (23 N. W., 519). This certificate may be waived expressly or by long acquiescence. **23**, 650 (37 N. W., 590).

5125. When any case or proceeding in which the record or transcript has been so as aforesaid made up, shall have been finally determined in the supreme court, the said original bill or bills of exception, and testimony, shall be by the clerk of the supreme court transmitted to the clerk of the district court below, whence such case or proceeding was removed, on the request of any party to the suit or proceeding, provided the cost of the transmittal thereof shall be first paid to said clerk of the supreme court if he shall demand it, by the party applying therefor.

5126. In the event a rehearing of any such cause or proceeding shall be allowed by the supreme court, or if for any other reason said court shall need or desire the use of such original bill or bills of exception or testimony in equity and law cases, it is hereby authorized to order the return of the same to it, and it shall be the duty of the clerk of the court in whose custody the same may be to transmit the the same to the clerk of the supreme court upon being personally served with a copy of such order of the supreme court, duly certified under the seal of the court, and the expense of the transmittal of such bills and testimony, together with costs made in recording, certifying, and serving such order shall be taxed to the unsuccessful party to such suit or proceeding unless the supreme court shall otherwise order; *Provided*, That the party at whose instance such expense of transmittal is to be made shall advance the same to the clerk who is desired to incur such expenses if required by him. Service of such certified copy of said order may be made by any person. If done by the sheriff of any county, his official return shall be sufficient evidence of the fact of service. If by any other person, the service shall be sufficiently proved by his affidavit to the fact.

5127 (588). No proceeding to reverse, vacate, or modify any judgment or final order rendered in the probate court, or district court, except as provided for in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of said judgment or final order shall be shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows: *First*—When the judgment or final order sought to be reversed directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the consideration money and costs in case the judgment or final order shall be affirmed in whole or in part. *Second*—When it directs the execution of a conveyance or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this state, or any judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same shall be affirmed, and pay the costs. *Third*—When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record, or any judge thereof, to the effect that during the possession of such property by the plaintiff in error he will not commit, or suffer to be committed, any waste thereon, and if the judgment be affirmed he will pay the value of the use and occupation of the property, from the date of the undertaking until the delivery of the possession pursuant to the judgment, and all costs. *Fourth*—When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which judgment was rendered, to abide the judgment of the appellate court, or the undertaking may be in such sum as may be prescribed as aforesaid, to abide the judgment and pay costs, if the same shall be affirmed.

Amended 1875, p. 131. Bond only necessary to stay proceedings, not to obtain review. **17**, 399 (23 N. W., 1). No supersedeas bond allowed in mandamus cases. **19**, 150 (26 N. W., 723). See **28**, 608 (44 N. W., 863).

5128 (589). Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other **instrument** may be executed and **deposited with** the **clerk** of the court in which the judgment was rendered or order made, to abide the judgment of the appellate court.

5129 (590). **Before** the written **undertaking** herein mentioned in section five hundred and eighty-eight shall **operate** to stay execution of the judgment or order, * a petition in error must be filed in the appellate court, and * the execution of the undertaking, and the sufficiency of the sureties must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall endorse said approval, signed by himself upon the undertaking, and file the same in his office for the defendant in error.

* to * inserted 1873, G. S., p. 630.

5130 (591). In an action arising on contract for the payment of money only, notwithstanding the execution of the undertaking in the last section mentioned, to stay proceedings, if the defendant in error give adequate **security to make restitution** in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to plaintiff in error of the money by him received under the judgment.

5131 (592). No **proceedings** for reversing, vacating, or modifying judgments or final orders shall be **commenced** unless within one year after the rendition of the judgment or making of the final order complained of, or in case the person entitled to such proceedings be an infant, a person of unsound mind, or imprisoned within one year as aforesaid, exclusive of the time of such disability; *Provided*, That the provisions of this act shall only apply to the judgments or decrees rendered after the date of its taking effect.

Original section allowed three years, and included married women among those under disability; latter omitted and time changed to six months, 1875, p. 40; changed to one year, 1877, p. 14. Proceedings in error must be commenced within one year from rendition of judgment, without regard to the time when the motion for new trial was decided. **14**, 431 (16 N. W., 472). If filed in supreme court after one year, will be dismissed on motion. **28**, 250 (44 N. W., 112). Summons in error need not be served within the year. **28**, 790 (44 N. W., 1135). Proceedings commenced sixteen months after judgment dismissed, though an appeal (subsequently dismissed) had been filed in the same case and notice issued within a year. **29**, 134 (45 N. W., 276). Act of 1877 extended time to one year. Judgment rendered May 17, law not taking effect until June 1, petition in error filed December 13, 1877, held, filed too late. **7**, 124. All defendants in a joint judgment are necessary parties to error proceedings, and upon failure to make them such within a year, supreme court acquires no jurisdiction. **29**, 621 (46 N. W., 91). The words "unsound mind" are used in this statute in the same sense as the word "insane." **10**, 540 (7 N. W., 288). See **21**, 674 (33 N. W., 245).

5132 (593). No proceedings to reverse, vacate, or modify any judgment rendered, or final order made, by a justice of the peace, shall operate as a **stay of execution**, unless the clerk of the district court shall take a written **undertaking** to the defendant in error, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside or reversed, or upon and after the affirmance thereof in the district court. * Nor shall said proceedings operate as a stay of execution on judgments of restitution rendered in actions for the forcible entry and detention, or the forcible detention only, of lands and tenements, unless a further undertaking shall be taken in the manner aforesaid, conditional for the payment to the defendant in error of all money or sums of money that has accrued or may accrue to said defendant from the plaintiff in error for the use, occupation, or rent of the lands and tenements in controversy, in case the judgment sought to be reversed shall be affirmed.

All after * added, as it now reads, 1871, p. 110.

5133 (594). When a **judgment** or final order shall be **reversed** either in whole or in part, **in** the **supreme court,** the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment as aforesaid, but shall send a special **mandate** to the court below, as the case may require, to award execution thereupon; *and it shall be the duty of the judges of the supreme court to prepare and file their **opinion** in every case as brought before them, within sixty days after the decision of the same, and no mandate shall be sent to the court below until the opinion provided for by this section has been filed.* The court to which such special mandate is sent shall proceed in such case in the same manner as if such judgment or final order had been rendered therein, and on motion and good cause shown, it may suspend any execution made returnable before it by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court.

*** to * inserted 1875, p. 41. If court cannot award new trial, will enter such judgment as district court should have entered. 2, 290. See 20, 408 (30 N. W., 410).**

5134 (595). When a **judgment** or final order is reversed, the plaintiff in error shall recover his costs, and when **reversed** in part, and **affirmed in part, costs** shall be equally divided between the parties.

Where a judgment is reversed and remanded plaintiff in error is entitled to his costs in supreme court. 28, 402 (44 N. W., 434). Affirmance conditioned on filing of remittitur, in which case costs ordered to be equally divided. 27, 178 (42 N. W., 1032).

5135 (596). When a **judgment** or final order shall be **affirmed** in the supreme court, the said court shall also render judgment against the plaintiff in error for five per cent upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes that there was reasonable **ground for** the proceedings in **error.**

Penalty held unconstitutional. 17, 703 (24 N. W., 425, 451).

5136 (597). A **mistake,** neglect, or omission **of** the **clerk** shall **not be a ground** of error, until the same has been presented and acted upon in the court in which the mistake, neglect, or omission occurred.

5137 (598). Rendering **judgment before** the **action** stood for trial according to the provisions of this code, shall be deemed **a clerical** error.

5138 (599). **Writs of error** and **certiorari** to reverse, vacate, or modify judgments or final orders in civil cases are **abolished,** but courts shall have the same power to compel complete and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and *certiorari.*

5139 (600). If the **judgment of** a **justice** of the peace, taken on error, as herein provided, to the district court, be **affirmed,** it shall be the duty of such court to render judgment against the plaintiff in error for the costs of suit, and to award execution therefor; and the court shall thereupon order its clerk to certify its decision in the premises to the justice, that the judgment affirmed may be enforced as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the district court.

5140 (601). When the proceedings of a justice of the peace are taken on error to the district court, in manner aforesaid, and the judgment of such justice shall be reversed or set aside, the court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment as in cases of appeal.

When judgment is reversed in district court, the case stands for trial *de novo* in that court. **10,** 475 (6 N. W., 760). Where county court had no jurisdiction, the district court could acquire none on appeal. **14,** 520 (16 N. W., 845).

Sec. 5141 formed sec. 12, act of 1873, G. S., p. 713.

5141. A complete record of every cause in the supreme court, as soon as it is finally determined, shall be made by the clerk of such court. Such record shall consist of the petition in error, the process and subsequent proceedings, and opinion of the court, but shall not include the transcript of proceedings had in the district court.

Secs. 5142 to 5145. "An act to provide for appeals in actions in equity." 1873. In force March 3. G. S., p. 716.

5142. That in actions in equity either party may appeal from the judgment or decree rendered or final order made by the district court, to the supreme court of the state; the party appealing shall, within six months after the date of the rendition of the judgment or decree, or the making of the final order, procure from the clerk of the district court and file in the office of the clerk of the supreme court a certified transcript of the proceedings had in the cause in the district court, containing the pleadings, the judgment or decree rendered or final order made therein, and all the depositions, testimony, and proofs offered in evidence on the hearing of the cause, and have the said cause properly docketed in the supreme court; and on failure thereof, the judgment or decree rendered or the final order made in the district court shall stand and be proceeded in as if no appeal had been taken.

Time dates from the announcement of the judgment by the court, not from the entry by the clerk. **20,** 101 (29 N. W., 260). Supreme court cannot extend time for taking appeal. **1,** 114. Affidavits will be received showing transcript filed in time. Filing mark of clerk only *prima facie* evidence. **4,** 405. No other notice required than filing supersedeas bond. **8,** 305. It is not essential to jurisdiction that transcript should be complete; notice of appeal is not essential; modifies **10,** 14. **28,** 604 (44 N. W., 731). It must show when, where, and in what court judgment was taken. **6,** 413. Stipulation of facts will not take place of bill. **29,** 219 (45 N. W., 626). The same steps are required to preserve the evidence for use on appeal as on error. Where appellant fails to appear and point out any error, and no error is apparent, judgment will be affirmed. **12,** 577 (12 N. W., 116). Motion for a new trial is a condition precedent to a review in the supreme court. **5,** 101. Decree confirming sale of real estate is a final order from which an appeal will lie. **8,** 304. Where demurrer has been sustained in suit in equity, the case may be appealed to supreme court. **6,** 163. In an action before a justice of the peace, where judgment was taken by default, and petition filed in district court to set aside such judgment and obtain a new trial, an appeal will lie when such default was unavoidable. **5,** 477. An appeal lies to supreme court from a decree granting a divorce. Practice in such a case. **12,** 73 (10 N. W., 543). A ruling on a motion to retax costs is reviewable. **18,** 509 (26 N. W., 245). An order for temporary alimony cannot be taken up until final judgment in divorce. **18,** 463 (25 N. W., 623). An appeal does not lie from an order vacating the temporary injunction granted at the commencement of the action, and which fails to show any final disposition of the case. **10,** 441 (6 N. W., 770). See **3,** 457; **4,** 132; **10,** 17 (4 N W., 309); **26,** 247 (41 N. W., 1098).

5143. In actions hereinafter heard and determined, when the proofs and testimony are taken orally before the court in the hearing of the cause, the same shall be reduced to writing, in form similar to bills of exception, and be allowed by the judge hearing the cause, as in cases of law.

Same procedure must be observed in preparing bill of exceptions in an equity case as in action at law. When bill of exceptions was signed without being submitted to adverse party, it was quashed in motion. **12,** 609 (12 N. W., 272); **13,** 222 (13 N. W., 211). Must have certificate of judge. **8,** 267.

5144. No appeal in any case in equity, now pending and undetermined, or which shall hereafter be brought, shall operate as a **supersedeas,** unless the appellant or appellants shall, within twenty days next after the rendition of such judgment or decree, or the making of such final order, execute to the adverse party a **bond** with one or more sureties as follows: *First*—When the judgment, decree, or final order appealed from directs the **payment of money,** the bond shall be in double the amount of the judgment, decree, or final order, conditioned that the appellant or appellants will prosecute such appeal without delay, and pay all condemnation money and costs which may be found against him or them on the final determination of the cause in the supreme court. *Second*—When the judgment, decree, or final order directs the execution of a **conveyance** or other instrument the bond shall be in such sum as shall be prescribed by the district court, or judge thereof in vacation, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and will abide and perform the judgment or decree rendered, or final order which shall be made by the supreme court in the cause. *Third*—When the judgment, decree, or order directs the **sale** or delivery of possession **of real estate,** the bond shall be in such sum as the court, or judge thereof in vacation, shall prescribe, conditioned that the appellant or appellants will prosecute such appeal without delay, and will not during the pendency of such appeal commit, or suffer to be committed, any waste upon such real estate. * *Fourth*—When the judgment, decree, or final order dissolves or modifies any order of **injunction** which has been, or hereafter may be granted, the supersedeas bond shall be in such reasonable sum as the conrt, or judge thereof in vacation, shall prescribe, conditioned that the appellant or appellants will prosecute such appeal without delay, and will pay all costs which may be found against him or them on the final determination of the cause in the supreme court; and such supersedeas bond shall stay the doing of the act or acts sought to be restrained by the suit, and continue such injunction in force until the case is heard and finally determined in the supreme court. The undertaking given upon the allowance of the injunction shall be and remain in effect until it is finally decided whether or not the injunction ought to have been granted.

All after * added 1889, p. 371. Amount of bond discretionary with court. Attorney no authority to waive supersedeas bond. **8,** 306. A third party buying land where no bond is given takes a good title. **28,** 608 (44 N. W., 863). Unless supersedeas bond is executed according to law, the clerk should issue order of sale. **19,** 221 (27 N. W., 109).

5145. Before any **bond** executed as aforesaid shall operate as a supersedeas, the execution of the same, and the sufficiency of the sureties therein, must be **approved** by the clerk of the court in which the judgment or decree was rendered or the final order was made.

CHAPTER II.—PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS AND ORDERS IN THE COURTS IN WHICH THEY ARE RENDERED.

5146 (602). A **district court** shall have **power** to vacate or modify its own judgments or orders, **after** the **term** at which such judgment or order was made: *First*—By granting a new trial of the cause, within the time and in the manner prescribed in section three hundred and eighteen. *Second*—By a new trial granted in proceedings against defendants constructively summoned, as provided in section seventy-seven. *Third*—For mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order. *Fourth*—For fraud practiced by the successful party in obtaining the judgment or order. *Fifth*—For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings. *Sixth*—For the death of one of the parties before the judgment in the action. *Seventh*—For unavoidable casualty or misfortune, preventing the party from prosecuting or defending. *Eighth*—For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section four hundred and forty-two. *Ninth*—For taking judgments upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

Does not confer original jurisdiction. Proceedings may be reviewed in error. **5,** 193. Stranger cannot be substituted after judgment. **8,** 467. That a summons served on wife by leaving at home with husband, was by him destroyed and never seen by her, is not cause for a new trial. **28,** 543 (44 N. W., 859). Petition to reinstate case dismissed for want of prosecution alleging as excuse lack of knowledge that time of holding court had been changed, does not show unavoidable accident or misfortune. **2,** 145. District court has discretionary powers over its own judgments during time at which they are rendered. **9,** 220 (2 N. W., 375). Decree of divorce may be set aside after term, when obtained by fraud. **24,** 551 (39 N. W., 594). If errors of fact are alleged, issue may be joined and trial had. If sufficient is shown, court next enquires into defenses. **17,** 69 (22 N. W., 78). Exercise of this power by county court upheld. **23,** 488 (37 N. W., 80). A suit to set aside or modify a judgment for other grounds must be founded upon some recognized source of equity jurisdiction. **15,** 617 (19 N. W., 591). Cited, **12,** 566 (11 N. W., 880); **13,** 229 (13 N. W., 214); **28,** 675 (44 N. W., 873).

5147 (603). The **proceedings** to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight, and nine of the last preceding section, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action; *Provided*, Such summons shall not issue in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error, by the party or his attorney, unless the court or a judge thereof shall endorse upon the petition permission to issue such summons.

5148 (604). The proceedings to **correct mistakes** or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by **motion,** upon reasonable notice to the adverse party or his attorney in the action. The motion to **vacate a judgment** because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

5149 (605). The **court may** first try and decide upon the grounds to vacate or **modify** a **judgment** or order, before trying or deciding upon the validity of the defense or cause of action.

5150 (606). A **judgment** shall **not** be **vacated** on motion or petition, **until** it is adjudged that there is a valid defense to the action in which the judgment is rendered, or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all **liens** and **securities** obtained under it shall be **preserved** to the modified judgment.

13, 229 (13 N. W., 214).

5151 (607). The party seeking to vacate or modify a judgment or order, may obtain an **injunction suspending proceedings** on the whole or part thereof, which injunction may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

5152 (608). When the **judgment** was rendered **before** the action stood for **trial,** the **suspension** may be granted as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

5153 (609). **Proceedings** to vacate or modify a judgment or order, for the causes mentioned in subdivision four, five, and seven of section six hundred and two, must be **commenced** within two years after the judgment was rendered or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section shall be within three years, and in subdivision nine within one year, after the defendant has notice of the judgment.

5154 (610). The **provisions** of this title, subsequent to section six hundred and one, shall **apply to** the **supreme** court **and probate court,** so far as the same may be applicable to the judgments or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings; and in estimating time, the probate court shall, for this purpose, be considered as holding in each year, three terms of four months each, the first commencing on the first day of January of each year.

5155 (611). **Cases pending in appellate courts** on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

TITLE XVII.—Costs.

5156 (612). In all cases in which the plaintiff is a **non-resident** of the county in which the action is to be brought, before commencing such action the plaintiff **must furnish** a sufficient **surety** for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by endorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought, or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtained judgment or not.

A cause will not be dismissed where security not given in time required. **25**, 467 (41 N. W., 448). An order to retax costs is applicable, and such appeal would not necessarily bring any other branch of the case before the supreme court. 14, 475 (16 N. W., 747).

5157 (613). An action in which **security** for the costs is required by the last section, and has **not** been **given,** shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time, to be allowed by the court, such security for costs be given.

5158 (614). **If** the **plaintiff** in an action, after its commencement, **become a non-resident** of the county in which it was brought, he shall give **security** for costs in the manner and under the restrictions provided in the two preceding sections.

5159 (615). In an action in which security for costs has been given, the **defendant may** at any time before judgment, after reasonable notice to the plaintiff, **move** the court **for additional security** on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this state, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by plaintiff.

5160 (616). After final **judgment** has been rendered in an action in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days' notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, **against** the **surety for costs,** his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

5161 (617). If any **informer, under** a **penal statute,** to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all **costs** accruing on such suit or prosecution unless he be an officer whose duty it is to commence the same.

5162 (618). **Where defendants disclaim** having any title or interest in land or other property, the subject-matter of the action, they shall recover their **costs,** unless for special reasons the court decide otherwise.

5163 (619). Unless otherwise provided by statute, the **costs of motions,** continuances, **amendments,** and the like, shall be taxed and paid as the court in its discretion may direct.

5164 (620). When it is not otherwise provided by this and other statutes, **costs** shall be **allowed** of course to the **plaintiff,** upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

Each party is primarily liable for his own costs and may be required to pay or secure them in advance. **12,** 243 (11 N. W., 320).

5165 (621). If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the **plaintiff** shall **not recover costs;** and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

Plaintiff cannot recover costs when action is within jurisdiction of justice of the peace and brought in any other court. **2,** 77. Action commenced in county court, judgment on appeal for $18, costs not allowed. **16,** 543 (20 N. W., 859). Jury found there was due plaintiff from defendant $193.40, and to defendant from plaintiff on an offset $118.40, and accordingly gave a verdict for plaintiff of $75; held that plaintiff was not entitled to costs. **11,** 462 (9 N. W., 637). See **9,** 264 (2 N. W., 354). **28,** 397 (44 N. W., 434).

5166 (622). **Costs** shall be **allowed** of course to any **defendant** upon a judgment in his favor in the actions mentioned in the last two sections.

5167 (623). In **other actions** the **court** may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its **discretion** it may think right and equitable.

Taxation of costs may be made a condition to permitting amended pleadings to be filed. **29,** 432 (45 N. W., 471). Court has authority to apportion costs in a bastardy case. **14,** 210 (14 N. W., 901). See **24,** 489 (39 N. W., 406).

5168 (624). Where **several actions** are brought **on one** bill of exchange, promissory note, or other obligation or **instrument** in writing, against several parties, who might have been joined as defendants in the same action, as allowed by section forty-four, no **costs** shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the state.

5169 (625). When a **summons** is **issued to another county** than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same **fees** as if the summons had issued in the county of which he is sheriff.

Secs. 5170 and 5171. "An act to provide for taxing of costs in certain cases." 1875, p. 53. In force February 25.

5170. That when an application shall be made to a court of record to postpone a **trial,** the payment to the adverse party of a sum not exceeding ten dollars, besides the costs of the term, may in the discretion of the judges be imposed as a **condition of granting** the **postponement.**

See **29,** 588 (45 N. W., 929).

5171. **Costs** may be allowed **on** a **motion** or demurrer, in the discretion of the court or judge, not exceeding ten dollars, which shall be absolute against the losing party on such demurrer or motion; *Provided*, That this provision shall not apply to verbal motions and demurrer *ore tenus* during the course of the trial.

TITLE XVIII.—Actions and Proceedings in Particular Cases.

CHAPTER I.—ACTIONS CONCERNING REAL PROPERTY.

5172 (626). In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his **petition** that he has a legal estate therein, and is entitled to the possession thereof, describing the same as required by section one hundred and thirty-three, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

Ejectment proper remedy for trial of title to lands. **21,** 215 (31 N. W., 661). Petition need not be in exact words of statute. **9,** 84 (2 N. W., 230). Plaintiff must rely upon the strength of his own title, not on the weakness of his adversary's. **21,** 271 (31 N. W., 797); **27,** 310 (43 N. W., 110); **5,** 525. Plaintiff must have not only legal title, but right to possession. **18,** 534 (26 N. W., 362). Must allege and prove that he has been turned out of the possession or has yielded the possession to the paramount title. **20,** 272 (29 N. W., 935). When the proceedings of a railroad to condemn land are void, ejectment a proper remedy. No defense that condemnation proceedings are pending. **21,** 375 (32 N. W., 162). Where defendant is not in possession, and land is wild, uninclosed prairie, no damages can be awarded for use and occupation. **24,** 178 (38 N. W., 791). Tax sale certificate does not constitute color of title to real estate. **14,** 363 (15 N. W., 711). One not made a party, but in possession adverse to plaintiff, may enjoin latter from ousting him, but injunction will not prevent plaintiff from bringing suit to eject occupant. **27,** 829 (44 N. W., 35). Defendant may interpose an equitable defense. **11,** 406 (9 N. W., 543); **6,** 369. Cited, **12,** 223 (10 N. W., 711).

5173 (627). It shall be sufficient in such action if the defendant in his **answer** deny, generally, the title alleged in the petition, or that he withholds possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defense is made.

5174 (628). In an **action by** a **tenant in common** of real property, against a co-tenant, the plaintiff must state, in addition to what is required in the first section of this chapter, that the defendant either denies the plaintiff's right, or did some act amounting to such denial.

5175 (629). In an action for the recovery of real property, **where** the plaintiff shows a **right to recover** at the time the action was commenced, but it appears that his right **has terminated during** the **pendency of** the **action,** the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

5176 (630). In an action for the recovery of real property, the party against whom judgment is rendered may, at any time during the term at which the judgment is rendered, demand **another trial** by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

First judgment is binding if not set aside at that term. Cannot be attacked collaterally. **16,** 217 (20 N. W., 245). New trial allowed on account of newly discovered evidence. **24,** 545 (39 N. W., 597). Does not apply to actions *quia timet*. **28,** 670 (44 N. W., 872).

5177 (631). **No further trial** can be had in such action, except upon appeal, unless for good cause shown, as in other actions.

5178 (632). The **parties** in an action for the recovery of property may avail themselves, if entitled thereto, of the **relief** of the statutes in force for the relief of occupying claimants of land.

5179 (633). If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit **waste** thereon, he is liable to pay three times the **damages** which have resulted from such waste, to the person entitled to sue **therefor.**

5180 (634). **Judgment of forfeiture and conviction** may be rendered against the defendant, whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

5181 (635). Any **person** whose duty it is to prevent waste, and **who has not used** reasonable **care** and diligence **to prevent** it, is deemed to have committed it.

5182 (636). For **willful trespass,** injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any town, or any land held by this state, for any purpose whatever, the trespasser shall pay treble **damages** at the suit of any person entitled to protect or enjoy the property aforesaid.

5183 (637). Nothing herein contained authorizes the recovery of more than the just value of the **timber** taken **from uncultivated** wood **land** for the repair of a public highway or bridge in its immediate neighborhood.

5184 (638). The **owner of** an estate in **remainder or reversion** may **maintain** either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

5185 (639). An **heir,** whether a minor or of full age, **may maintain** these **actions** for injuries done in the time of his ancestors as well as in his own time, unless barred by the statute of limitations.

5186 (640). Where **lands** or tenements are **sold** by virtue of an **execution,** the **purchaser** at such sale may **maintain** his **action** against any person, for either of the causes above mentioned, occurring or existing after his purchase.

5187 (641). This provision is not intended to prevent the **person who occupies** the **lands,** in the meantime, from using them in the ordinary course of husbandry, or from using **timber for** the purpose of making suitable **repairs** thereon.

5188 (642). But if for this purpose he employ **timber** vastly **superior to that required** for the occasion, he will be deemed to have committed waste, and will be liable accordingly.

CHAPTER II.—ACTIONS ON OFFICIAL SECURITIES.

5189 (643). When an **officer,** executor, or administrator within this state, by misconduct or neglect of duty, forfeits his **bond** or renders his sureties liable, any person injured thereby or who is by law entitled to the benefit of the security may bring an action thereon, in his own name, against the officer, executor, or administrator, and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The **action** may be **instituted** and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

See note to section 4949, citing 10, 531 (7 N. W., 276).

5190 (644). A **judgment** in favor of a party **for** one **delinquency, does not preclude** the same or **another** party from an **action** on the same security for another delinquency.

CHAPTER III.—PROCEEDINGS UPON MANDAMUS.

Secs. 5191 and 5192 formed secs. 2 and 3, ch. 42, R. S. 1866, p. 279. (Sec. 1 refers to *quo warranto*. See *post*, 5237.)

5191. Any **private person may,** on his own relation, sue out writs of mandamus without application to the prosecuting attorney.

5192. Persons suing out either of the writs under the provisions of this chapter shall be liable to **costs** as in civil cases.

Secs. 5193 and 5194. "An act to regulate the prosecution of cases of original jurisdiction in the supreme court." 1867, p. 47. In force June 10.

5193. That **proceedings** in the **supreme court** in applications for mandamus shall be regulated by chapter 3 of title 18 of the code of civil procedure, in applications by *quo warranto* by title 23 of said code, and on application for *habeas corpus* by chapter 25 of the criminal code; and all other provisions of law relating to those remedies shall be applicable to said proceedings when had in said court exercising its original jurisdiction.

See **27,** 746 (43 N. W., 249).

5194. The several **district courts** shall have and exercise concurrent **jurisdiction** with the supreme court in the several kinds of action enumerated in the first section of this act, and the mode of proceeding and the practice relating thereto shall be the same as that obtaining in the supreme court under the provisions of this act and as now provided by law.

May be allowed by district judge at chambers within his district when right is clear. **24,** 265 (38 N. W., 752).

5195 (645). The **writ** of mandamus may be **issued to** any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. But though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

Should not be used to correct errors but to compel action. **23,** 641 (37 N. W., 612). Application for writ should show a demand and refusal, and should set forth facts which clearly impose upon the respondent the duty which it is sought to compel him to perform. **7,** 133. Relator must show a clear right to the performance by the respondent of the particular duty sought to be enforced, and that he has no adequate remedy at law. **14,** 267 (15 N. W., 210). And that the respondent is in default of some legal duty then due at his hands. **8,** 292. Any person may compel an officer to perform a duty imposed by law. **17,** 311 (22 N. W., 545). The writ cannot be used to contract legal discretion, but to compel officers to act. **15,** 267 (18 N. W., 85); **18,** 426 (25 N. W., 587); **18,** 431 (25 N. W., 610). Writ may be set aside by court granting same if obtained by fraud. **17,** 567 (24 N. W., 200). Mandamus is an action at law and is reviewable on error and not on appeal. **13,** 223 (13 N. W., 212). Private party must make demand before he can obtain writ to compel county clerk and treasurer to keep their books in a particular manner. **14,** 204 (15 N. W., 320). Office of writ not to find a definite sum due, but merely that it is the duty of proper officers to provide for what is due. **22,** 796 (36 N. W., 157). Lowest bidder or taxpayer may bring. **4,** 161. Moderator may be compelled to sign reports of taxes voted in school district. **11,** 361 (9 N. W., 559). Writ will issue to compel railway company to deposit with county judge amount of an award of damages for right of way, from which no appeal has been taken. **27,** 698 (43 N. W., 419). Mandamus awarded against state auditor to compel him to pay for 3,500 copies of Guy Brown's Statutes. **12,** 234 (11 N. W., 321). Will lie to compel sheriff to appoint appraisers under exemption laws. **2,** 8. Mandamus awarded against a county treasurer to compel him to pay certain county warrants, there being sufficient funds in the treasury. **12,** 233 (11 N. W., 296). See **25, 34** (40 N. W., 593; **25,** 304 (41 N. W., 155); **25,** 96 (41 N. W., 131); **29,** 291 (45 N. W., 631).

5196 (646). This **writ** may **not** be **issued** in any case where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the **party** beneficially **interested.**

Writ will not issue where there is an adequate remedy at law. **4,** 261; **9,** 506 (4 N. W., 239). Will not issue to compel clerk of district court to issue order of sale, where there has been no application to such district court to direct the order. **29,** 123 (45 N. W., 278). Writ will not lie to compel commissioners of public buildings to draw warrant in payment of sub-contractor who has done work on public building. **2**, 6. Not allowed when right to office drawn in question. **1**, 172. Will not issue to compel levy of a tax to pay a dormant judgment. **25**, 303 (41 N. W., 155). Writ to compel revocation of saloon license will not be granted by supreme court while an appeal is pending before it, from judgment of district court, sustaining action of city council. **27**, 476 (43 N. W., 249). Will not issue to compel justice to make order in a case after it has been taken to district court. **27**, 56 (42 N. W., 762). Mandamus to compel treasurer to issue tax deeds will not lie where actions are pending in other courts to have tax proceedings declared void. **11**, 266 (9 N. W., 82). Nor to compel an officer to release property where replevin would lie. **9**, 507 (4 N. W., 239).

5197 (647). The writ is either alternative or peremptory. The **alternative writ** must **state** concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ, with his certificate of having done as he is commanded. The **peremptory writ** must be in a similar **form,** except that the words requiring the defendant to show cause why he has not done as commanded must be omitted.

5198 (648). When the **right** to require the performance of the act **is clear,** and it is apparent that no valid excuse can be given for not performing it, a **peremptory** mandamus may be allowed in the first instance. In all other cases, the alternative **writ** must **first** be **issued.**

5199 (649). The **motion for** the **writ** must be made upon affidavit, and the court may require a **notice** of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

5200 (650). The **allowance of** the writ must be endorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the **defendant** duly **served** neglect to return the same, he shall be proceeded against as for **contempt.**

May be allowed by judge at chambers within his district when right is clear. **24**, 265 (38 N. W., 752).

5201 (651). On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause, by **answer** made, in the same manner as an answer to a petition in a civil action.

Mere allegations of fraud and illegal voting, without any statement of facts upon which such charges were based, were held not sufficient as a defense to application for mandamus. **14**, 507 (16 N. W., 830).

5202 (652). If **no answer** be made, a peremptory mandamus must be allowed against the defendant. If an answer be made containing **new matter,** the same shall not in any respect conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

5203 (653). **No other pleading** or written allegation is allowed than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had in the same manner as in a civil action.

Verification upon information and belief not good. Affidavit should set out facts. **8**, 98. Writ may be demurred to and answer allowed if overruled. **17**, 60 (22 N. W., 120).

5204 (654). If **judgment** be given **for** the **plaintiff,** he shall recover the **damages** which he shall have sustained, to be ascertained by the court or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

5205 (655). A **recovery** of damages by virtue of this chapter, against a party who shall have made a return to a writ of mandamus, **is a bar to** any **other action** against the same party for the making of such return.

5206 (656). Whenever a peremptory mandamus is directed to any public officer, body, or board, commanding the performance of any public **duty** especially **enjoined** by law, if it appear to the court that such officer, or any member of such body or board, has without just excuse refused or **neglected** to perform the duty so enjoined, the court may impose a fine, not exceeding five hundred dollars, upon every such officer, or member of such body or board. Such **fine,** when collected, shall be paid into the treasury of the county where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

Respondent not liable for contempt for not paying judgment for costs. **19,** 697 (26 N. W., 711).

TITLE XIX.—JURIES.

5207 (657). All free white males residing in any of the counties of this state, having the **qualifications** of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not being judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners, or jailers, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and are not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries, within their counties respectively; *Provided,* That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, licensed attorneys, practicing physicians, postmasters, and carriers of the United States mails, shall not be compelled to serve as jurors.

Colored men competent. **2,** 224. Juror must be an elector of county wherein he is called to serve. **14,** 574 (16 N. W., 905).

Sec. 5208. "An act concerning the competency of jurors." 1877, p. 16. In force June 1.

5208. That on the trial of any suit in which a **municipal corporation is a party,** the **inhabitants** and taxpayers of such municipal corporation shall be **competent** jurors if otherwise competent and qualified according to law.

Taxpayer competent in suit against city. **5,** 453.

5209 (658). In each of the counties in this state wherein a district court is appointed or directed to be holden, the **county commissioners** of the county shall, at least fifteen days before the first day of the session of the court, meet together, or any two of them may meet, and **select** sixty persons possessing the qualifications prescribed in section six hundred and fifty-seven, and as nearly as may be, a proportionate number from each precinct in the county, and shall, within five days thereafter, furnish to the clerk of the district court of the county, or his deputy, a **list** of the names of the persons selected.

The law requiring a *proportionate number* of jurors to be selected from each precinct is mandatory. **12,** 263 (11 N. W., 323); **9,** 522 (4 N. W., 246). Shall be summoned from the body of the county. **4,** 287. List may be made on basis of last vote of the several precincts. **15,** 209 (18 N. W., 129). This section must have a reasonable construction. **14,** 542 (16 N. W., 898). Not proper for court to order sheriff to fill up jury with certain persons. **5,** 379. Power should be exercised with care. **9,** 164 (2 N. W., 378). Grand jury called in part from a petit jury constitutes an illegal body. **1,** 396. Extra jurymen may be called when regular panel excused or challenged. **4,** 230. Cited *sub nom.* section 5159, **12,** 63 (10 N. W., 463); **12,** 264 (11 N. W., 323); **12,** 382 (11 N. W., 494); **12,** 389 (11 N. W., 495).

5210 (659). The **clerk** or deputy clerk receiving the names shall write the **name** of each person selected on a separate ticket, and place the whole number of **tickets** into a box or other suitable and safe receptacle, and shall **preserve** the **list** of names furnished by the commissioners in the files of his office.

5211 (660). The **clerk** of the district court or his deputy, and the sheriff or his deputy, or, if there be no sheriff or deputy sheriff, the coroner of the county shall, at least ten days before the first day of the session of the district court, meet together and **draw** by lot out of a box, a receptacle wherein shall be kept the tickets mentioned and referred to in section six hundred and fifty-nine (659) of said title, twenty-four **names**, and the persons whose names are drawn shall be the petit **jurors**. And when a grand jury is ordered, the clerk or deputy clerk, and sheriff or deputy sheriff, or coroner, if there be no sheriff or deputy sheriff, shall then draw sixteen (16) additional names, and the persons whose names are drawn shall be the grand jury.

Amended 1885, p. 381.

5212 (661). The **clerk** shall, on the day of the drawing aforementioned, issue an **order** to the **sheriff**, deputy sheriff, or coroner, as the case may be, commanding him **to summon** the persons whose names are drawn as petit jurors to appear before the district court at or before the hour of eleven o'clock on the morning of the first day of the term, stating in the order the day of the week and month and the place of the sitting of the court, to serve as petit jurors, and a like order commanding the sheriff, deputy sheriff, or coroner to summon the grand jury when a grand jury has been ordered and drawn.

Amended 1885, p. 382.

5213 (662). The sheriff, deputy sheriff, or coroner, having received the order, shall, at least five days before the first day of the session of the court, make **service of** said **order** upon each person whose name was selected and drawn as a petit juror by reading or delivering a copy of the same to the person summoned, or by leaving a copy at his residence, except that the copy shall contain only the name of the person served and not the name of any other petit juror. And when a grand jury is ordered and summoned service of said order shall be made on each person in the same manner as is provided for service on a petit juror in this section.

Amended 1885, p. 382. Officer cannot demand fees in advance for serving summons. **27**, 398 (43 N. W., 177).

5214 (663). **Each** grand **juror** and petit juror summoned shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of the court.

5215 (664). Whenever the proper officers fail to summon a grand or petit jury, or when all persons summoned as grand or petit jurors do not appear before the district courts, or whenever at any general or special term, or at any period of a term for any cause there is no **panel** of grand jurors or petit jurors, or the panel is **not complete,** said court may order the sheriff, deputy sheriff, or coroner to summon without delay good and lawful men, having the qualifications of jurors, and each person summoned shall forthwith appear before the court, and if competent, shall serve on the grand jury or petit jury, as the case may be, unless such person may be excused from serving or lawfully challenged.

5216 (665). **No person** shall be **summoned** as a juror in any district court of this state **more than once in two years,** and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror, at any term of said court held within two years prior to the time of such challenge; *Provided,* No finding, verdict, or inquest returned by any jury shall be invalidated or set aside because a member of such jury served as a grand or petit jury within the two (2) years immediately preceding such verdict or inquest.

Rewritten 1881, p. 207.

5217 (666). The **sheriff**, deputy sheriff, or coroner, having received the **order** or service issued by the clerk, shall make **return** thereof, with his proceedings, to the clerk, before the session of the court.

5218 (667). **If** any **person summoned** to appear as grand juror or petit juror, fails, refuses, or neglects to appear, such person shall be considered guilty of **contempt** of the court, and may be fined by the court in any sum not less than five dollars nor more than fifty dollars; and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail; and if the county **commissioners** in any county neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five dollars nor more than fifty dollars; and if any **clerk** of the district court, or deputy clerk, or **sheriff**, deputy sheriff, or coroner, neglects or fails to perform the duties imposed by this chapter, the person so offending shall be considered guilty of **contempt** of court, and be fined by the court not less than five dollars nor more than fifty dollars; and if guilty of gross misconduct in office and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

5219 (668). If a sheriff or other **officer corruptly**, or through favor or ill will, **summon** a **juror**, with the intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from like motives, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be **fined** not exceeding five hundred dollars, and forfeit his office, and be forever **disqualified** from holding any office in this same.

Cited, 19, 626 (28 N. W., 1.)

JURIES IN COUNTIES OF 70,000.

Secs. 5220 to 5233. "An act to provide for the manner of selecting, drawing, and summoning grand and petit jurors in counties having a population of seventy thousand (70,000) or more, to prescribe the qualifications of such jurors, to provide for the punishment of persons seeking to serve as jurors, or seeking to have other persons selected as jurors," etc. 1889, p. 408. In force March 30. (Repealing secs. 658–61 and 665 of code.)

5220. That the **county board** of commissioners or supervisors of counties having a population of seventy thousand (70,000) or more shall at or before the time of its meeting in January in each year, or at any time thereafter when necessary for the purposes of this act, make a **list** of a sufficient number, not less than one-tenth of the legal voters of each town or precinct in the county, giving the place of residence of each name on the list, to be known as the jury list.

5221. In making such **selection**, the county board shall choose a proportionate number from the residents of each town or precinct, and shall take the names of such only as are in the opinion of the board: *First*—Citizens of the town or precinct not exempt from serving on juries. *Second*—Of the age of twenty-one years or upwards, and under sixty years old. *Third*—In possession of their natural faculties. *Fourth*—Free from all legal exceptions, of fair character, of approved integrity, of sound judgment, well informed, and who understand the English language.

All before * substituted for original, 1891, p. 401.

5222. If, for any reason, the list or the **selection** provided for in the foregoing sections of this act shall not be made at the meeting of the board held at the time specified, such list or selection shall be made at any meeting, to be held as soon thereafter as may be.

5223. Whenever a person whose name is on the list shall be drawn as a juror, his name shall be checked off from said list, and such person shall not be again drawn as a juror till every person named upon such list qualified to serve as a juror has been drawn. The clerks of the district courts of each county shall, at the end of each term of the court, furnish the county clerk a list of all persons who have served as petit jurors during the term. All jurors on regular panels shall serve during the week for which they were drawn and until discharged from the case in which they may be serving, if any, at the expiration of such time unless sooner excused by the court.

Amended 1891, p. 401.

522. As often as one list shall have been exhausted, another shall be furnished, as provided in section one (1) of this act, and the jurors shall be selected therefrom in the manner provided in sections two (2) and three (3). The clerks of the district courts and other courts of record in the county shall, at the end of each term of court, furnish the county clerk a list of all persons who have served as jurors during the term.

5225. A list of jurors so selected shall be kept in the office of the county clerk, who shall write the name and residence of each person selected upon a separate ticket and put the whole into a box or wheel to be kept for that purpose.

5226. At least twenty days before the first day of any trial term of the district court, the clerk of such court shall repair to the office of the county clerk, and in the presence of such county clerk, and at least one of the judges of the district court, after the box or wheel containing said names has been well shaken by the county clerk, and without partiality, draw thirty (30) names of persons, then residents of said county, for each judge sitting with a jury in said court, as petit jurors for the first three weeks of that term, unless such court shall otherwise order, and said clerk shall, immediately after such drawing, post in a conspicuous place in his office the names of the persons so drawn, and shall also immediately notify said persons by registered letters of the fact of their having been drawn as jurors, which notice shall command them to appear at the place of holding such court at the hour of ten A. M. of the first (1st) day of the term of said court. If any person so drawn shall fail to appear at said time and place, the court shall order the clerk to issue a summons for him to appear forthwith, which shall be served as provided in section six hundred and sixty-two (662) of the code of civil procedure, and unless such person upon his appearance shall make it satisfactorily appear to the court that he had no actual notice that he was drawn as a juror, and required to report as aforesaid, he shall be taxed with the costs of such service, which shall be entered as a judgment against him in favor of the state, and when collected shall be turned over to the treasurer of said county. The court shall examine all jurors so drawn who appear, and if more than twenty-four petit jurors for each judge sitting with a jury, who are qualified and not subject to any exemptions or any of the disqualifications provided in this act, shall appear and remain after all excuses are allowed, the court shall discharge by lot the number in excess of twenty-four for each judge sitting with a jury. At the same time and in the same manner the clerk of said court shall also draw the same number of names as petit jurors for the second three weeks of that term, and the persons so drawn shall be notified and summoned the same as those first drawn, and, during the term, the court shall direct the clerk to draw, notify, and summon other petit jurors in the manner described, as often as the length of the term may require; *Provided*, That should said clerk draw from the said box the name of a person whom he may know to be dead, it shall be the duty of said clerk to report the name of such person to the county clerk, and said clerk of such court shall draw other names until the required number shall have been selected; *Provided*, *also*, That whenever there shall be pending for trial in said court, any criminal cause wherein the defendant is charged with a felony, and the judge holding said court shall be convinced from the circumstances of the case that a jury cannot be obtained from the regular panel to try said cause, said judge may in his discretion prior to the day fixed for the trial of said cause direct the clerk to draw (in the same manner as the regular panel is drawn) such number as the judge may direct as a **special panel**, from which a jury may be selected to try said cause, which panel shall be notified and summoned for said day the same as the regular panel.

Rewritten 1891, p. 402.

5227. If a **grand jury** shall be required by law or by order of the judge for any term of court, it shall be the duty of the county board in each of the counties in this state wherein such court is directed to be holden, at least twenty (20) days before the sitting of such court, to select twenty-three (23) persons, possessing the qualifications as provided in section two (2) of this act, and as near as may be a proportionate number from each town or precinct in their respective counties, to serve as grand jurors at such term; and to cause the county clerk, within five days thereafter, to certify the names of the persons so selected as grand jurors to the clerk of the court for which they are selected, who shall issue and deliver to the sheriff of the county wherein the court is to be held, at least ten days before the term of the court for which they shall have been selected, or during term time if the court shall order, a summons commanding him to summon the persons so selected as aforesaid, to appear before such court at or before the hour of eleven (11) o'clock A. M., on the first day of the term, or upon such other day as the judge shall direct, to constitute a grand jury for such term. The sheriff shall serve such summons in the manner provided for service of summons on petit jurors, and for any refusal or neglect so to do, shall be deemed guilty of contempt of court, and may be fined therefor as provided in section six hundred and sixty-seven (667) of the code of civil procedure. The judge shall examine the jurors who appear, and if more than sixteen grand jurors who are qualified and not subject to any exemption or any of the disqualifications provided in this act shall appear and remain after all excuses are allowed, the sheriff or deputy sheriff shall draw by lot the names of the number in excess of sixteen who shall be discharged by the court; and the sixteen remaining shall constitute the grand jury.

5228. The clerk of the court shall, within five days after such drawing, issue to the sheriff a **summons** commanding him to summon, as petit jurors, a sufficient number, not less than thirty, of the persons so drawn, giving their residences, to appear at the place of holding such court, at the hour of ten o'clock A. M. of the first day of the term, or upon such other day of the term as the judge shall direct and a like number to appear at the same place and hour two weeks after the time, at which the former number of jurors were summoned to appear, and the same number for each two weeks thereafter the court will probably be in session, which summons shall be served as provided in section six hundred sixty-two (662) of the code of civil procedure.

5229. If for any reason the **panel** of petit jurors shall **not** be **full** at the opening of such court, or at any time during the term, the clerk of such court may again repair to the office of the county clerk and draw in the same manner as at the first drawing, such number of jurors as the court shall direct, to fill such panel, who shall be notified and summoned in the same manner as the others, and, if necessary, jurors may continue to be so drawn, notified, and summoned from time to time until the panel shall be filled. In case a jury shall be required in such court for trial of any cause, before the panel shall be filled in the manner herein provided, the court shall direct the sheriff to summon from the bystanders, or from the body of the county, a sufficient number of persons having the qualifications of jurors, as provided in this act, to fill the panel, in order that a jury to try such cause may be drawn therefrom, and when such jury is drawn, the persons selected from the bystanders, or from the body of the county, to fill the panel, and not chosen on the jury, shall be discharged from the panel, and those who shall be chosen to serve on such jury shall also be discharged from the panel at the conclusion of the trial; *Provided*, That persons selected from the bystanders, as provided in this section, shall not thereby be disqualified or exempt from service as jurors, when regularly drawn by the clerk for that purpose, in the manner provided in this act.

Amended 1891, p. 404.

5230. When by reason of challenge in the selection of a jury for the trial of any cause, or by reason of the sudden sickness or absence of any juror for any cause, the regular panel shall be exhausted, the court may direct the sheriff to summon a sufficient number of persons having the qualifications of jurors to fill the panel for the pending trial; but, upon objection by either party to the cause to the sheriff summoning a sufficient number of persons to fill the panel, the court shall appoint a special bailiff to summon such person; *Provided*, The same person shall not be appointed special bailiff more than once at any term of court. Any person who shall seek the position of juror, or who shall ask any attorney or other officer of the court or other person to secure his selection as a juryman, shall be deemed guilty of a contempt of court, and be fined not exceeding twenty dollars ($20), and shall thereby be disqualified from serving as a juror for that term, and such fact shall be sufficient ground for challenge. Any attorney or party to a suit pending for trial at that term who shall request or solicit the placing of any person upon a jury shall be deemed guilty of a contempt of the court and be fined not exceeding one hundred dollars ($100), and the person so sought to be put upon the jury shall be disqualified to serve as a juror at that term of court.

5231. It shall be sufficient cause of challenge of a petit juror that he lacks any one of the qualifications mentioned in section two (2) of this act; or in section six hundred and fifty-seven (657) of the code of civil procedure, or if he is not one of the regular panel, that he has served as a juror on the trial of a cause in any court of record in the county within one year previous to the time of his being offered as a juror, or that he is a party to a suit pending for trial in that court, at that term. It shall be the duty of the court to discharge from the panel all jurors who do not possess the qualifications provided in this act as soon as the fact is discovered; *Provided*, If a person has served on a jury in a court of record within one year he shall be exempt from again serving during such year unless he waives such exemption; *Provided further*, That it shall not be a cause of challenge that a juror has read in the newspapers an account of the commission of the crime with which the prisoner is charged, if such juror shall state on oath that he believes he can render an impartial verdict, according to the law and the evidence; *And provided further*, That in the trial of any criminal cause, the fact that a person called as a juror has formed an opinion or impression based upon rumor or upon newspaper statements (about the truth of which he has expressed no opinion) shall not disqualify him to serve as a juror in such case, if he shall upon oath state that he believes he can fairly and impartially render a verdict therein, in accordance with the law and the evidence, and the court shall be satisfied of the truth of such statement.

See **4,** 75.

5232. It shall be the duty of the **clerk** of the court at the commencement of **each week** of the term to write the name of each petit juror summoned and retained for that week on a separate ticket, and put the whole into a box or other place for safe keeping, and as often as it shall be necessary to empanel a jury, the clerk, sheriff, or coroner shall, in the presence of the court, **draw** by chance twelve names out of such box or other place, which shall be designated the twelve to be sworn on the **jury,** and in the same manner for the second jury, in their turn, as the court may order and direct.

5233. **Sections** six hundred fifty-eight (658), six hundred fifty nine (659), six hundred sixty (660), six hundred sixty-one (661), and six hundred sixty-five (665) of the code of civil procedure, and all acts and parts of acts in conflict herewith, shall be **repealed** so far as respect counties having a population of seventy thousand (70,000) or more; *Provided*, That the existing law relating to juries shall be in effect in the respective counties until such time as the county boards of the respective counties having a population of seventy thousand (70,000) or more shall have complied with the provisions of this act.

TITLE XX.—CONTEMPTS.

5234 (669). Every **court** of record shall have **power to punish** by fine and imprisonment, or by either, as for criminal contempt, persons guilty of any of the following acts: *First*—Disorderly, contemptuous, or insolent behavior towards the court, or any of its officers, in its presence. *Second*—Any breach of the peace, noise, or other disturbance tending to interrupt its proceedings. *Third*—Willful disobedience of or resistance willfully offered to any lawful process or order of said court. *Fourth*—Any willful attempt to obstruct the proceedings or hinder the due administration of justice in any suit, proceedings, or process pending before the courts. *Fifth*—The contumacious and unlawful refusal of any person to be sworn or affirmed as a witness, and when sworn or affirmed, the refusal to answer any legal and proper interrogatory.

Power to punish for contempt is inherent in every court having common law jurisdiction without regard to statute. **23,** 852 (37 N. W., 668). District court has authority to punish for contempt any person who attempts to corrupt or unlawfully influence jurors. Proceedings for constructive contempt must be commenced by an information under oath. The *acts* constituting the alleged contempt must be stated. **13,** 449 (14 N. W., 143). Failure to pay judgment for alimony is not a contempt. **23,** 308 (36 N. W., 536).

5235 (670). **Contempts** committed in the presence of the court may be **punished** summarily; in other cases the party, upon being brought before the court, shall be notified of the accusation against him, and have a reasonable time to make his defense.

5236 (671). Persons punished for contempt under the preceding provisions shall nevertheless be liable to **indictment,** if such contempt shall amount to an indictable offense; but the court before which the conviction shall be had may, in determining the punishment, take into consideration the punishment before inflicted in mitigation of the sentence.

Secs. 672, 673, 674, relative to contempts in justice's court, being identical with secs. 5568-70, *post*, are omitted.

TITLE XXI.

Secs. 675 to 688, comprising this title, providing for appeals from district to supreme court, having been, in effect, declared inoperative [3 Neb., 453] is omitted. For the act now in force, regulating such appeals, see secs. 5142 to 5145.

QUO WARRANTO.

Sec. 5237 formed sec. 1 of ch. 42, R. S. 1866, p. 249. Secs. 2 and 3 refer to mandamus. See *ante*, secs. 5191 and 5192.

5237. When **any citizen** of this state shall claim any office which is usurped, invaded, or unlawfully held and exercised by another, the person so claiming such office shall have the **right to file** in the district court an **information** in the nature of a *quo warranto*, upon his own relation, and with or without the consent of the prosecuting attorney, and such person shall have the right to prosecute said information to final judgment; *Provided*, He shall have first applied to the prosecuting attorney to file the information, and the prosecuting attorney shall have refused or neglected to file the same.

Any one claiming an office may proceed by *quo warranto* in his own name if attorney general refuses to bring such action. **28**, 455 (44 N. W., 471). In a proceeding to oust a corporation of its franchise it is the only necessary party defendant. **24**, 156 (38 N. W., 43). Information by a private individual to enable him to take the seat of a *de facto* officer must state facts showing relator's right. **29**, 205 (45 N. W., 279). Is not for the correction of errors, but to compel action. **23**, 641 (37 N. W., 612).

TITLE XXII.—BOATS.

Secs. 689 to 703 repealed. G. S., p. 713.

TITLE XXIII.—INFORMATIONS.

5238 (704). An information may be **filed against** any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by the laws of this state, or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this state without being authorized by law, or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

Quo warranto lies to try the title of relator to the office of county treasurer. **13**, 531 (14 N. W., 481).

5239 (705). Such information may be **filed by** the prosecuting attorney of the proper county whenever he deems it his duty so to do.

Information good though not filed by district attorney. **4**, 512. Where private person has no direct interest in the result of the action, he cannot maintain it. Where the state at large is interested, the attorney general is the proper party to bring it. **13**, 532 (14 N. W., 481).

5240 (706). He must file such information **when directed** to do so by the governor, the legislative assembly, or the district court.

5241 (707). Such **information** shall **consist** of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original petition.

5242 (708). Such **statement** shall be **filed** in the clerk's office, and **summons** issued and served in the same manner as hereinbefore provided for the commencement of actions in the district court.

5243 (709). The defendant shall appear and **answer** such information in the usual way, and **issue** being joined it shall be **tried** in the ordinary manner.

5244 (710). When the defendant is holding an **office** to which another is claiming the right, the information should set forth the name of such **claimant**, and the **trial** must, if practicable, **determine** the **rights** of contesting parties.

5245 (711). If **judgment** be rendered **in favor of** such **claimant**, he shall proceed to exercise the functions of the office after he has qualified as required by law.

5246 (712). The court, after such judgment, shall order the **defendant** to deliver over all books and papers in his custody or under his control belonging to said office.

5247 (713). When the judgment has been rendered in favor of the claimant, he may at any time within one year thereafter bring suit against the defendant and recover the damages he has sustained by reason of the act of the defendant.

5248 (714). .When several persons claim to be entitled to the same office or franchise, an information may be filed against all or any portion thereof, in order to try their respective rights thereto.

5249 (715). If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege, or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

5250 (716). If the defendant be found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

5251 (717). When an information is upon the relation of a private individual, it shall be so stated in the petition and proceedings, and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

5252 (718). In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

5253 (719). If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders.

5254 (720). Such trustees shall enter into bond, in such a penalty and with such security as the court may approve, conditioned for the faithful discharge of their trust.

5255 (721). Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties.

5256 (722). The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

5257 (723). The court shall, upon an application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books, or papers of the corporation in anywise necessary for the settlement of its affairs, to deliver up the same to the trustees.

5258 (724). As soon as practicable, after their appointment, the trustees shall make and file in the office of the clerk of the court, an inventory of all the effects, rights, and credits which come to their possession or knowledge, the truth of which inventory shall be sworn to.

5259 (725). They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders respectively, to the extent of the effects which come to their hands, in the same manner as though they were the executors of a deceased person.

5260 (726). When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

5261 (727). Any person who, without good reason, refuses to obey any order of the court as herein provided shall be deemed guilty of a **contempt of court**, and shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order.

5262 (728). A **proceeding** of this kind may be instituted, in the manner above contemplated, **for** the purpose of annulling or **vacating** any **letters patent** granted by the proper authorities of this state, where there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have by any other means forfeited the interest acquired under the same.

TITLE XXIV.—CHANCERY.

Secs. 729 to 783 repealed. 1867, p. 71. G. S., p. 707.

TITLE XXV.—PROBATE COURT.

CHAPTER I.

Secs. 784 to 795 repealed. G. S., p. 271.

CHAPTER II.—ADOPTION OF CHILDREN.

5263 (796). Whenever it may be desirable that any person or persons shall adopt the child of another, the same may be **consummated** in the manner hereinafter provided.

5264 (797). The parents, guardians, or other person or persons having lawful control or custody of any minor child, may make a **statement** in writing **before** the **county judge** of the county where the person or persons desiring to adopt such child reside, that he, she, or they voluntarily relinquish all right to the custody of, and power and control over such child (naming him or her), and all claim and interest in and to the services and wages of such child, to the end that such child shall be fully adopted by the party or parties (naming them) desiring to adopt such child, which statement shall be signed and sworn to by the party making the same, before said county judge, in the presence of at least two witnesses, and the person or persons desiring to adopt such child shall also make a statement in writing, to the effect that he, she, or they freely and voluntarily adopt such child (naming him or her) as their own, with such limitations and conditions as shall be agreed upon by the parties, which said statement shall also be signed and sworn to by the parties making the same, before said county judge, in the presence of at least two witnesses; *but when such child is an **inmate of "The Home for the Friendless,"** or of any orphans' home organized under the laws of this state, and has been voluntarily surrendered in writing by its parents or guardians, for the purpose of adoption, to the directors or trustees of the "Society of the Home for the Friendless," or of such orphans' home, or has no father or mother living, or has been previously abandoned by its parents or guardians, or left in any such charitable institution for four months without being claimed, then the written consent of the president of the board of directors or trustees of said society, or of such orphans' home shall be given to such adoption, signed in the presence of any county judge of this state and certified by him to the county judge of the county where the person or persons desiring to adopt such child reside, which shall be received in the place of the relinquishment as herein required;* *Provided*, In all cases where such child shall be of the age of fourteen years and upward, the written **consent of** such **child** shall be necessary to the validity of such proceeding; *And provided further,* Whenever it shall be desirable the party or parties adopting such child may, by stipulations to that effect in such statement, adopt such child and bestow upon him or her equal rights, privileges, and immunities of children born in lawful wedlock, and such statement or consent shall be filed with and recorded by said county judge in a book kept in his office for that purpose.

* to * inserted 1885, p. 384.

5265 (798). And such county judge shall appoint a time and place for the **hearing** of said matter.

Rewritten 1885, p. 385.

5266 (799). At the time and place of the hearing of such matter, if said hearing shall not be adjourned, the said probate judge shall render a **decree** therein, in accordance with the conditions and stipulations of said statement; *Provided,* In case it shall appear to the satisfaction of said probate judge that such proceedings are not for the best interest of the child or children, he may refuse to enter such decree, and the matter shall thereupon be dismissed.

5267 (800). All **decrees** entered in such case in conformity with the provisions and requirements of this chapter shall be **conclusive** upon all the persons interested in such proceedings or matter, and the **child** or children thus adopted shall take the **surname** of the person or persons adopting the same, and all relations of parent and child, agreeable to such stipulations and the decree of the probate court, shall attach, and such child or children, if so stated in such decree, shall be subject to the exclusive control and **custody** of such parent or parents, and shall possess and enjoy all the **rights,** privileges, inheritance, heirships, and immunities of children born in lawful wedlock.

5268 (801). The **probate judge** shall be entitled to charge the same **fees** for such services as now are or hereafter may be provided by law for like services in other cases.

TITLE XXVI.—Partition.

5269 (802). When the object of the action is to effect the partition of real property among several joint owners, the **petition** must describe the property, and the several interests and estates of the several joint owners thereof, if known. *All tenants in common, or joint tenants of any estate in land, may be compelled to make or suffer partition of such estate or estates in the manner hereinafter prescribed.

All after * added 1871, p. 112. Dower interest insufficient. **20,** 181 (29 N. W., 299). Co-tenants must account for rents. **4,** 366. See **21,** 581 (33 N. W., 261).

5270 (803). If the number of shares or interests is known, but the **owners** thereof are **unknown,** or if there are, or are supposed to be, any interests which are unknown, contingent, or doubtful, these facts must be **set** forth in the petition with reasonable certainty.

5271 (804). **Creditors having a** specific or general **lien** upon all or any portion of the property may or may not be made **parties,** at the option of the plaintiff.

5272 (805). If the **lien** is **upon** one or more **undivided interests** of any of the parties, it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

5273 (806). The **answers** of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by **supplemental pleading,** if necessary, may deny the interests of any of the other defendants.

5274 (807). Where there are two or more plaintiffs they may **reply** jointly, or either of them may reply to any or all the answers of the defendants.

5275 (808). **Issues** may thereupon be joined and tried between any of the contesting **parties**, the question of **costs** on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

5276 (809). Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary **proof of title**, if he has any, and must file the same, or copies thereof, with the clerk.

Documentary proof may not be necessary. 2, 314.

5277 (810). If the **statements** in the petition and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be **taken as true.**

5278 (811). After all the shares and interests of the parties have been settled in any of the methods aforesaid, **judgment** shall be rendered confirming those shares and interests, and directing partition to be made accordingly.

5279 (812). Upon entering such judgment the court shall appoint **referees to make partition** into the requisite number of shares.

3, 92.

5280 (813). For good and sufficient reasons appearing to the court, the **referees** may be directed **to allot particular portions** of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value.

Where the premises are incapable of a fair division, the court can award pecuniary compensation to one of the parties. 18, 586 (26 N. W., 390).

5281 (814). If it appears to the **referees** that partition cannot be made without great prejudice to the owners, they shall so **report** to the court.

5282 (815). If satisfied with such report the court shall cause an **order** to be entered, directing the referees **to sell** the premises so situated, and shall also fix the **terms** of sale.

5283 (816). Before proceeding to sell, the **referees** shall each give **security,** to be approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter the court may require further and better security.

5284 (817). The same **notice** of sale shall be given as when lands are sold on execution by the sheriff, and the **sale** shall be **conducted** in like manner.

5285 (818). After completing said sale, the **referees** must **report** their **proceedings** to the court, with a description of the different parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk.

5286 (819). After making the order of sale as aforesaid, the court shall direct the **clerk** to **report** whether there be any general **incumbrance** by mortgage, judgment, or otherwise, upon any portion of the property.

5287 (820). If deemed advisable, the court may appoint a **referee** to enquire **into** the nature and amount of **incumbrances,** and **report** accordingly. From that report an appeal lies to the court.

5288 (821). The referee shall give the **parties interested** at least five days' **notice** of the time and place when he will receive proof of the amount of such incumbrances.

5289 (822). In taking such **proof** he may receive, with other evidence, the affidavit of the parties interested.

5290 (823). If any **incumbrance** be ascertained to exist, the proceeds of the sale of that portion, after the **payment** of costs, or so much thereof as is necessary, shall, if the owner consent, be paid over to the incumbrancer.

5291 (824). **If** the **owner object** to the payment of such incumbrance, the **money** shall be **retained** or invested by order of the court to await final action in relation to its deposition, and notice thereof shall be forthwith given to the incumbrancer; unless he has already been made a party.

5292 (825). The court may direct an **issue** to be made up **between** the **incumbrancer and** the **owner,** which shall be decisive of their respective rights.

5293 (826). If an **estate for life or years** be found to exist **as an incumbrance** upon any part of said property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested and the proceeds to be paid to the incumbrancer during the existence of the incumbrance.

5294 (827). The **proceedings** in relation to the incumbrances shall **not delay** the **distribution** of the proceeds of other shares in respect to which no difficulties exist.

5295 (828). The court in its discretion may require all or any of the **parties** before they receive the moneys arising from any sale authorized in this title, to give satisfactory **security,** to refund such moneys with interest, in case it afterward appears that such parties were not entitled thereto.

5296 (829). If the **sales** aforesaid be approved and **confirmed** by the court, an order shall be entered directing the referees, or any two of them, to execute **conveyances** pursuant to such sales. But no conveyance can be made until all the money is paid, without receiving from the purchaser a mortgage of the land so sold, or other equivalent security.

5297 (830). Such **conveyances** so executed, being recorded in the county where the premises are situate, shall be **valid** against all subsequent purchasers, and also against all persons interested at the time who were made parties to the proceedings in the mode pointed out by law.

5298 (831). If the owner of any share thus sold has a husband or wife living, and if such husband or wife do not agree as to the disposition that shall be made of the **proceeds** of such sale, the court must direct it to be **invested** in real estate under the supervision of such person as it may appoint, taking the title in the name of the owner, of the share sold as aforesaid.

5299 (832). If the **sales** are disapproved, the **money** paid and the securities given must be **returned** to the persons respectively entitled thereto.

5300 (833). When a **partition** is deemed proper the referees must make out the shares by visible **monuments,** and may employ a competent **surveyor** and the necessary assistants to aid them.

5301 (834). The **report of** the **referees** must be in writing, signed by at least two of them. It must describe the respective shares with reasonable particularity, and be accompanied by a **plat** of the premises.

5302 (835). Unless the **shares** are **allotted** to their respective owners by the referees as hereinbefore contemplated the clerk shall number the shares and then draw the names of the future owners by lot.

5303 (836). When **partition** can be conveniently made **of** part of the premises, but not of all, one portion may be partitioned and the other sold as hereinafter provided.

5304 (837). On good cause shown, the **report** may be **set** aside and the matter again referred to the same or other referees.

5305 (838). Upon the **report** of the referees being **confirmed,** judgment thereon shall be rendered that the partition be firm and effectual forever.

5306 (839). The **defendants** may be **served** in the same manner as in ordinary civil action by summons, or by publication as provided in this code, and* when all the parties in interest have been duly served, any of the proceedings herein prescribed shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings.

All before * added 1871, p. 112.

5307 (840). The **judgment** of partition shall be **presumptive evidence** of title in the cases, and as between the parties themselves it is conclusive evidence thereof, **subject,** however, **to be defeated** by proof of a title paramount to, or independent of, that under which the parties held as joint tenants or tenants in common.

5308 (841). All the **costs** of the proceedings in partition shall be paid in the first instance by the plaintiffs, but eventually by all the parties in proportion to their interests, except those costs which are created by contests above provided for.

5309 (842). Any **person claiming** to hold an **incumbrance** upon any portion of the property involved in the suit, may, in default of the owner, **appear** and act as his representative in any of the proceedings under this title.

5310 (843). **Persons having contingent interests** in such property may be made **parties** to the proceedings, and the proceeds of the property so situated (or the property itself, in case of partition) shall be subject to the order of the court until the right becomes fully vested.

5311 (844). The ascertained **share of** any **absent owner** shall be retained, or the proceeds invested for his benefit.

TITLE XXVII.—Foreclosure of Mortgages by Action.

5312 (845). All **petitions** for the foreclosure or satisfaction of mortgages shall be **filed** in the district court in chancery where the mortgaged premises are situated.

Action of foreclosure is a proceeding *in rem.* **6,** 391. Mistake in description may be corrected and decree of foreclosure entered in the same action. **12,** 495 (11 N. W., 750). When mortgage contains condition that if a certain payment is not made the whole amount becomes due and payable, condition must be performed or foreclosure will be allowed. **6,** 182. Mortgagee may pay taxes and include same in petition of foreclosure. Amount due on mortgage including taxes paid, constitute a single and indivisible demand. **11,** 269 (9 N. W., 81). Equity redemption. **9,** 120 (2 N. W., 218). Land itself sold, not equity of redemption. All rights of parties duly in court passed to purchaser by virtue of sheriff's deed. **8,** 235. In case of foreclosure, junior incumbrancers must exercise right to redeem in time limited. **22,** 743 (36 N. W., 142). Sale after tender of money to senior mortgagee by junior void. Incumbrancers not made parties to suit not affected by decree, **1,** 201. When first mortgagee may foreclose, notwithstanding he has been made a party to a foreclosure by second mortgagee. **10,** 373 (6 N. W., 428). Upon foreclosure by senior mortgagor, junior mortgagors not being made parties, *bona fide* purchaser at sale entitled to credit for improvements in action by junior mortgagors requiring him to redeem, and should not be charged with rents and profits. **24,** 461 (39 N. W., 418). All incumbrancers, whether prior or subsequent, are proper parties; but only subsequent incumbrancers are necessary parties. If petition state facts sufficient to require a proper party to answer, and he fails to do so, he will be bound by the decree. **14,** 323 (15 N. W., 702). In foreclosure suit, the answers of the several defendants claiming rights as lien holders, subsequent purchasers or lessees may be regarded also as cross-petitions for relief as against their respective co-defendants, as well as against the plaintiff. And any such defendant regularly served with process who fails to answer any material allegation of his co-defendant is bound thereby as well as by the decree founded thereon, and unless he appeals therefrom the same becomes, as to him, *res adjudicata.* Under our system of practice all parties are bound to take notice of all pleadings filed in the case. **11,** 142 (7 N. W., 845). One who is made a party defendant to a foreclosure suit, but fails to appear, cannot, unless he show cause for failure, claim a lien on property after sale. **24,** 379 (38 N. W., 819). Defect of title on covenant of warranty no defense. **2,** 279. See **24,** 580 (39 N. W., 616).

5313 (846). Whenever a petition shall be filed for the foreclosure or satisfaction of a mortgage, the **court** shall have power to **decree** a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the cost of suit.

Decree reduced $90, being the amount of possible damages in signing an appeal bond from which no loss was incurred. **27**, 250 (42 N. W., 1043). Decree modified without notice; sale thereunder unauthorized. **29**, 406 (45 N. W., 680); **27**, 250 (42 N. W., 1043).

5314 (847). When a petition shall be filed for the satisfaction of a mortgage, the court shall not only have the power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary execution, as in other cases, against other property of the mortgagor.

It is not intended that a mortgagor shall be answerable for the debt secured upon the mortgage and personalty at the same time. One of these remedies being selected, it must be exhausted before reverting to the other. **13**, 543 (14 N. W., 653).

5315 (848). After such petition shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

Cannot bring an action on note after petition has been filed. **9**, 402 (2 N. W., 853). After foreclosure of mortgage, the mortgaged estate becomes the primary fund for the payment of the debt, and is not a mere surety for payment of the same. **11**, 353 (9 N. W., 564).

5316 (849). If the mortgage debt be secured by the obligation or other evidence of debt of any other person besidse the mortgagor, the complainant may make such person a party to the petition, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

Purchaser of mortgaged realty, who has assumed mortgage debt, may be sued at law thereon directly by mortgagee. **27**, 829 (44 N. W., 34). All persons materially interested in the mortgaged premises should be made parties to the suit. **5**, 200.

5317 (850). Upon filing a petition for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

Petition should state whether any action has been had for the recovery of the debt. **6**, 362. Allegations sufficient. **15**, 650 (19 N. W., 694).

5318 (851). If it appear that any judgment has been obtained in a suit at law for the money demanded by such petition, or any part thereof, no proceedings shall be had in such case, unless, to an execution against the property of the defendant in such judgment, the sheriff or other proper officer shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgaged premises.

Failure to issue execution on judgment does not divest one of mortgage lien. **7**, 489.

5319 (852). All sales of mortgaged premises under a decree in chancery shall be made by a sheriff, or some other person authorized by the court in the county where the premises or some part of them are situated, *and in all cases where the sheriff shall make such sale he shall act in his official capacity and he shall be liable on his official bond for all his acts therein, and shall receive the same compensation as is provided by law for like services upon sales under speculation [execution].

All after * added 1875, p. 42. Sheriff cannot sell a greater interest than named in the order. **4**, 404. Not necessary that court issue order of sale to sheriff. **3**, 177. See **29**, 406 (45 N. W., 680).

5320 (853). Deeds shall thereupon be executed by such sheriff, which shall vest in the purchaser the same estate that would have vested in the mortgagee if the equity of redemption had been foreclosed, and no other or greater; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Deed conveys all the title of all parties to the action. **20**, 283 (29 N. W., 936); **18**, 130 (24 N. W., 452). The purchaser takes all the title the mortgagee had whether set up in the pleadings or not. **15**, 601 (19 N. W., 494).

5321 (854). The **proceeds of** every **sale** made under a decree in chancery shall be **applied** to the discharge of the debt adjudged by such court to be due, and of the costs awarded, and if there be any surplus, it shall be brought into court for the use of the defendant, or of the persons entitled thereto, subject to the order of the court.

5322 (855). If such **surplus**, or any part thereof, shall remain in said court for the term of three months without being applied for, the court may direct the same to be **put out at interest** under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of such court.

5323 (856). Whenever a **petition** shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest on any portion or installment of the principal, and there shall be other portions or installments to become due subsequently, the petition shall be **dismissed** upon the defendant bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

5324 (857). If, after a **decree** for sale, entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by further order of the court, upon a **subsequent default** in the payment of any portion or installment of the principal, or any interest thereafter to become due.

This section has no application to an action to foreclose a mortgage when the whole amount secured by the mortgage is due on account of a failure to pay interest when due, but applies only to cases brought under the preceding section. **10**, 181 (4 N. W., 1011).

5325 (858). If the defendant shall not bring into court the amount due, with costs, or if for any other cause a **decree** shall pass **for** the **complainant**, the court may direct a reference to a sheriff to **ascertain** and report the **situation** of the mortgaged premises, or may determine the same on oral or other testimony, and if it shall appear that the same can be sold in parcels, without injury to the parties, the decree shall direct so much of the mortgaged **premises** to be **sold** as will be sufficient to pay the amount then due on such mortgage, with costs, and such decree shall remain a security for any subsequent default.

5326 (859). If, in the case mentioned in the preceding section, there shall be any **default** subsequent to such decree in the payment of any portion or installment of the principal, or any interest due upon such mortgage, the court may, upon the petition of the complainant, by a **further order**, founded upon such first decree, direct a sale of so much of the mortgaged premises to be made, under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon, and the same proceedings may be had as often as a default shall happen.

5327 (860). If, in any of the foregoing cases, it shall appear to the court that the mortgaged **premises** are so situated that a **sale of** the **whole** will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

5328 (861). In such case the **proceeds** of such sale shall be **applied** as well to the interest, portion, or installment of the principal due as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest, for the benefit of the complainant, to be paid to him as the installments or portions of the principal or interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

TITLE XXVIII.—ARBITRATION.

5329 (862). All **controversies** which might be the subject of civil actions may be **submitted** to the decision of one or more arbitrators as hereinafter provided.

Award as binding as a judgment. 3, 390.

5330 (863). The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject-matter, must sign a **written agreement,** specifying particularly what demands are to be submitted, the names of the arbitrators, and the court by which the judgment on their award is to be rendered.

5331 (864). They shall then appear before some justice of the peace of the county and **acknowledge** the **instrument** by them signed to be their free act and deed.

5332 (865). The submission may be of some particular matters or **demands,** or of all demands which the one party has against the other, or of all mutual demands on both sides.

5333 (866). A **submission** to arbitrators of the subject-matter of a suit may also be made **by** an **order of court,** upon an agreement of parties, after suit is commenced.

5334 (867). All the **rules** prescribed by law in cases of referees are **applicable** to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties.

5335 (868). Neither party shall have the power to revoke the submission without the consent of the other.

5336 (869). If either **party neglect to appear** before the arbitrators, after due notice, they may nevertheless proceeed to hear and determine the cause upon the evidence which is produced before them.

5337 (870). If the time within which the **award** is to be made is fixed in the submission, no award made after that **time** shall have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported.

Conclusions of fact and law must be separately stated. 17, 593 (24 N. W., 222).

5338 (871). If the time of filing the **award** is not fixed in the submission, it must be **filed** within one year from the **time** such submission is signed and **acknowledged,** unless by mutual consent the time is prolonged.

5339 (872). The award must be **in writing,** and shall be **delivered** by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court, and not opened until the court so orders.

Award must state facts found and the conclusions of law thereon separately. 1, 459. Award not set aside because it states facts separately from conclusions of law. 24, 393–4 (38 N. W., 843).

5340 (873). The **cause** shall be **entered** on the **docket** of the court at the term to which the award is returned, and shall be called up and acted upon in its

order. But the court may require actual **notice** to be given to either party, when it appears necessary and proper, before proceeding to act on the award.

5341 (874). The **award** may be **rejected by** the **court** for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators, or any others agreed upon by the parties.

Defendant may set up that arbitrators considered matters not submitted to them. Arbitrators competent witnesses. **6**, 88. Party seeking to set aside award must set forth facts on which he bases his belief. Belief not sufficient. **4**, 544. See **17**, 593 (24 N. W., 222); **21**, 686 (33 N. W., 473).

5342 (875). When the **award** has been **confirmed**, it shall be filed and entered on the record, and shall have the same force and **effect** as the verdict of a **jury.** Judgment may be entered and execution issued accordingly.

5343 (876). When an **appeal** is taken from such judgment, copies of the submission and award, together with all affidavits, shall be returned to the supreme court.

5344 (877). If there is no provision in the submission respecting **costs**, arbitrators may award them at their discretion.

5345 (878). The **compensation of** the **arbitrators** shall be two dollars per day, for the time actually and necessarily spent, unless the court fix a less amount; and the fees of the justice of the peace shall be twenty-five cents for making out the agreement of submission (in case he does so), and the like amount for taking and certifying the acknowledgment thereto.

5346 (879). **Nothing** herein contained shall be construed **to affect** in any manner the **control of** the **district court** over the parties, the arbitrators or their award, nor to impair or affect any action upon an award or upon any bond or other engagement to abide an award.

TITLE XXIX.—GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

CHAPTER I.—PROCESS.

5347 (880). The **style** of all process shall be "The state of Nebraska, ——— county." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk, and dated the day it issued.

See also Const., art. VI, sec. 24. Shall run in the name of the state of Nebraska; not in the name of the city. **4**, 106. See **14**, 143 (15 N. W., 332). Object of. **25**, 698 (41 N. W., 765).

5348 (881). An order for a provisional remedy or any other process, in an action wherein the **sheriff** is a **party**, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

5349 (882). The court or judge, for good cause, may appoint a **person to serve** a particular **process** or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the **motion** of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the **fees** allowed to the sheriff for similar services.

County judge may appoint person to serve summons. **9**, 94 (2 N. W., 376). Replevin papers served by party appointed by clerk cannot be first questioned in supreme court. **28**, 136 (44 N. W., 89). Cited, **13**, 282 (13 N. W., 404).

CHAPTER II.—DUTIES OF CLERKS.

5350 (883). All writs and orders for provisional remedies and **process** of every kind, shall be **issued** by the clerks of the several courts. Before they shall be issued, a **precipe** shall be filed with the clerk, demanding the same; which precipe shall be for the direction of the clerk, and not material to the papers in the case after the issuing of such writ or process.

5351 (884). It is the duty of the **clerk** of each of the courts to **file** together **and** carefully **preserve** in his office all **papers** delivered to him for that purpose, in every action or special proceeding.

5352 (885). He shall **endorse** upon every **paper** filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

5353 (886). He shall, upon the return of every summons served, enter upon the docket the name of the defendant or **defendants summoned,** and the day of the service upon each one. The **entry** shall be evidence of the service of the summons, in case of the loss thereof.

5354 (887). He shall **keep** the **records** and books and papers appertaining to the court, and record its proceedings.

5355 (888). The **provisions** of article eight, title nine, of this code, prescribing the duties of clerks of the district court, shall, as far as they are **applicable,** apply to the clerks of other courts of record.

5356 (889). The clerk of each of the courts shall exercise the **powers and** perform the **duties** conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. In the performance of his duty he shall be under the direction of his court.

Supreme court will not mandamus clerk to issue order of sale where there has been no application therefor to his own court. **29,** 122 (45 N. W., 278).

CHAPTER III.—DUTIES OF SHERIFFS.

5357 (890). The sheriff shall **endorse** upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, the day and the **hour** it was **received** by him.

5358 (891). He shall **execute** every summons, order or other **process,** and return the same as required by law; and if he **fail** to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be **amerced** by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure.

5359 (892). The sheriff shall exercise the **powers and** perform the **duties** conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law.

CHAPTER IV.—MISCELLANEOUS PROVISIONS.

5360 (893). Any **duty** enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be **performed** by his lawful **deputy.**

5361 (894). Whenever an **oath** is required by this code, the **affirmation** of a person conscientiously scrupulous of taking an oath, shall have the same effect.

5362 (895). The **time** within which an act is to be done as herein provided, shall be **computed** by excluding the first day and including the last; if the last day be **Sunday,** it shall be **excluded.**

Construed with reference to tax sale and deed. **13,** 536 (14 N. W., 659). Applicable to proceedings before justices of the peace. **8,** 362. See **15,** 661 (20 N. W., 30).

5363 (896). Section four hundred and thirty-two shall not be construed to impair the **right** of a party **to a jury,** if he appear at the trial by himself or attorney, and demand the same.

5364 (897). The ministerial officer, whose duty it is to take security in an undertaking provided for by this code, shall have the right to require the person offered as **surety** to make an **affidavit of** his **qualifications,** which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security.

Clerk district court ministerial officer and liable for negligently taking insufficient security. 5, 236. Has no reference to the duties of a sheriff. ' 22, 691 (36 N. W., 118).

5365 (898). The **surety** in every undertaking provided for by this code, must be a resident of this state, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this state, equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate have the **qualifications** prescribed in this section.

5366 (899). The judges of the supreme **court** shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capital of the state, and **revise** their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code; **and** they shall **make** such further **rules** consistent therewith as they may deem proper. The rules so made shall apply to the supreme court and the district courts.

CHAPTER V.—PROVISIONS RESPECTING EXISTING ACTIONS.

5367 (900). The **provisions** of this code do **not apply to proceedings** in actions or suits **pending** when it takes effect. They shall be conducted to final judgment or decree, in all respects as if it had not been adopted; but the provisions of this code shall apply after a judgment, order, or decree heretofore or hereafter rendered, to the proceedings to enforce, vacate, modify, or reverse it.

CHAPTER VI.—PROVISIONS AS TO THE OPERATIONS OF THE CODE.

5368 (901). **Rights** of civil action given or **secured by existing laws** shall be prosecuted in the manner provided by this code, except as provided in the following section. **If** a case ever arise in which an action for the enforcement or protection of a right, or the **redress** or prevention of a wrong, **cannot be had under** this **code**, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice.

5369 (902). Until the legislature shall otherwise provide, this **code** shall **not affect proceedings** on *habeas corpus*, *quo warranto*, or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of deceased persons; nor proceedings under statutes relating to dower, divorce, or alimony, or to establish or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy, or insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code whenever it is applicable.

5370 (903). Where, by general or special statute, a civil action, legal or equitable, is given and the mode of proceeding therein is described, this **code** shall **not affect** the **proceedings under** such **statute,** until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates by name or otherwise the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

Secs. 5371 and 5372 formed secs. 4 and 5 of "An act to amend the code of civil procedure by abolishing the distinction between actions at law and suits in equity." 1867, p. 71. In force June 19. (Sec. 1 amended sec. 2 of this code, sec. 2 repealed secs. 2 and 87 of the same, and sec. 3 amended sec. 87; sec. 6 was repealed. 1871, p. 113.)

5371. The **final** orders or **decree of chancery** heretofore rendered, or which may hereafter be rendered, in any chancery proceedings pending at the time this act shall take effect, may be **enforced** or reviewed in the same manner, and within the same time, as if this act had not taken effect; and all suits in chancery pending at the time of the taking effect of this act may be prosecuted to final decree in like manner.

5372. The **words** hereinafter found in the code of civil procedure shall be **construed** and held to mean as follows, to-wit: "complainant" shall mean plaintiff; "bill" or "complaint" shall mean petition; "suit" shall mean action or civil action; and "decree" shall mean judgment; and all other words and terms found in said code of civil procedure, heretofore applicable to the chancery practice hereby repealed, shall be so construed and held as to carry out the intention of this act, prevent a failure of justice, and give adequate relief in all cases.

TITLE XXX.—Justices of the Peace.

CHAPTER I.—JURISDICTION.

5373 (904). The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be **limited to** the **county** wherein they may have been elected, and where they shall reside.

5374 (905). **[Matters.]**—Justices of the peace, within and co-extensive with their respective counties, shall have jurisdiction and authority: *First*—To administer an oath or affirmation authorized or required by law to be administered. *Second*—To take acknowledgment of deeds, mortgages, and other instruments of writing. *Third*—To solemnize marriages. *Fourth*—To issue subpœna for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions. *Fifth*—To try the action for forcible entry and detention, or the detention only, of real property. *Sixth*—To proceed against security for costs and bail for the stay of execution on their dockets. *Seventh*—To issue attachments, and proceed against the goods and effects of debtors in certain cases. *Eighth*—To issue executions on judgments rendered by them. *Ninth*—To proceed against constables failing to make return, making false return, or failing to pay over money collected on execution, issued by such justice. *Tenth*—To try the right of the claimant to property taken in execution, or on attachment.

Justice can make no order in a case after it has been taken to district court. **27**, 56 (42 N. W. 762).

5375 (906). Justices of the peace shall have jurisdiction in actions for **trespass** on real estate, where the damages demanded for such trespass shall not exceed two hundred dollars, and no claim of title to such real estate set up by the defendant shall take away or affect the jurisdiction hereby given.

Amount raised from one hundred dollars. 1881, p. 208. But where both parties claim title to the land justice would not have jurisdiction. **28**, 397 (44 N. W., 434).

5376 (907). Justices shall **not have cognizance of** any action: *First*—To recover damages for an assault, or assault and battery. *Second*—In any action for malicious prosecution. *Third*—In actions against justices of the peace, or other officers, for misconduct in office, except in the cases provided for in this title. *Fourth*—In actions for slander, verbal or written. *Fifth*—In actions on contracts for real estate. *Sixth*—In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions for trespass on real estate, which are provided for in this title.

Justice would not have jurisdiction of an action against an officer and his bondsmen for misconduct in office. But this would not prevent sheriff being sued in justice court in trespass or trover, for wrongfully taking property on execution. **12**, 37 (10 N. W., 531).

CHAPTER II.—COMMENCEMENT OF SUITS, SERVICE AND RETURN OF PROCESS, AND PROCEEDINGS IN ARREST AND ATTACHMENT.

5377 (908). **Actions** before justices of the peace are **commenced** by summons or by the appearance and agreement of the parties without summons. In the former the action is deemed commenced, upon the delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case the action is deemed commenced at the time of docketing the case.

6, 411.

5378 (909). When a **guardian** to the suit is necessary, he must be **appointed** by the justice **as follows**: *First*—If the infant be plaintiff, the appointment must be made before the summons is issued upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend. The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice. *Second*—If the infant be defendant, the guardian must be appointed before trial. It is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

5379 (910). The style of the **summons** shall be: "The state of Nebraska, —— county;" it shall be dated the day it is issued, and signed by the justice issuing the same; be directed to the constable or sheriff of the proper county (except in case a person be deputed to serve it, in which case it shall be directed to such person); must contain the names of defendant or defendants, if known, and if unknown, give a description of him or them, and command the officer, or person serving the same, to summon the defendant or defendants to appear before such justice, at his office, in —— county, at a time specified therein; and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him. There shall be endorsed on the writ the amount for which the plaintiff will take judgment if the defendant fail to appear. If the **defendant fail to appear,** judgment shall not be rendered for a larger amount and the costs.

Amount to be endorsed on summons only necessary when judgment is for money. **9**, 108 (2 N. W., 227). Claim was described as "for $75, with ten per cent interest from February 19, 1880, and ten per cent of amount as attorney fee upon a certain promissory note," and it was held sufficient. **13**, 35 (13 N. W., 15). It is sufficient if summons issued by county judge describe plaintiff's cause of action in general terms, such as being "upon one promissory note," or the like. **12**, **204** (10 N. W., 707).

5380 (911). The **summons** must be **returnable** not more than twelve days from its date, and must, unless accompanied with an order to arrest, be **served** at least three days before the time of appearance, by delivering a copy of the summons, with the endorsement thereon (certified by the constable or person serving the same to be a true copy), to the defendant, or leaving the same at his usual place of residence; *Provided*, That an acknowledgment on the back of the summons, or the voluntary appearance of a defendant is equivalent to service.

Sufficiency of service, see **21**, 60 (31 N. W., 262). Reading summons not sufficient. Copy must be left with defendant. **9**, 504 (4 N. W., 237). A defendant who has appeared at any time cannot have judgment set aside but must appeal. **16**, 230 (20 N. W., 636, 877). Summons returnable on Sunday or holiday not void but returnable on the next court day. **23**, 735 (20 N. W., 637); **15**, 661 (20 N. W., 30).

5381 (912). A **summons against** a **corporation** may be **served** upon the president, mayor, chairman of the board of directors or trustees, or other chief officer, or if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof.

Applies to railroad and all other corporations, foreign as well as domestic. 23, 557 (37 N. W., 462).

5382 (913). When the **defendant** is **an incorporated insurance company,** and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

5383 (914). When the **defendant** is **a foreign corporation,** having a managing agent in this state, the service may be upon such agent.

This does not include service under sec. 5382 of code. 23, 557 (37 N. W., 462). Service on a general agent of insurance company good. 28, 653 (44 N. W., 991).

5384 (915). When the **defendant** is **a minor** under the age of fourteen years the service must be upon him and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

APPEARANCE.

5385 (916). The **parties** are **entitled to one hour** in which to appear, after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case, the justice may postpone the time of appearance until the close of such trial.

If defendant appear according to common or sun time it is sufficient. 28, 668 (44 N. W., 872)

ARREST BEFORE JUDGMENT.

5386 (917). An **order for** the arrest of the defendant in a civil action shall be **made** by the justice of the peace before whom the same is brought, **when** there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars: *First*—That the defendant has removed or begun to remove any of his property out of the county, with the intent to defraud his creditors. *Second*—That the defendant has begun to convert his property, or any part thereof, into money, for the purpose of defrauding his creditors. *Third*—That he has property or rights in action which he fraudulently conceals. *Fourth*—That he has assigned, removed, or disposed of, or begun to assign, remove, or dispose of, his property, or any part thereof, with intent to defraud his creditors. *Fifth*—That the defendant fraudulently contracted the debt or incurred the obligation for which suit is about to be brought. The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

Failure to pay village occupation tax no ground for arrest. 27, 67 (42 N. W., 913).

5387 (918). The **order** of arrest may be made to accompany the **summons,** or at any **time** afterwards, before judgment.

5388 (919). The order of arrest shall not be issued by a justice of the peace until there has been executed by the **plaintiff,** if a resident freeholder of the county where the suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written **undertaking,** to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim, stated in the affidavit.

5389 (920). The **order** of arrest shall be addressed and delivered, with a copy of the affidavit, to a constable or sheriff of the proper county; it shall **state** the names of the parties, the amount of the plaintiff's claim specified in the affidavit, to be signed by the justice of the peace issuing it, and shall **require** the constable or sheriff to arrest the defendant and bring him forthwith before said justice.

5390 (921). The **officer** receiving said order shall **execute** the same by forthwith arresting the defendant and delivering to him a copy thereof, and of the affidavit. And the defendant, so arrested, unless the claim of the plaintiff, specified in the affidavit, and costs of suit, are paid, or unless discharged from custody by order of the plaintiff, shall be taken by such constable or sheriff forthwith before the justice of the peace by whom said order of arrest was issued, and kept in custody until discharged by law.

5391 (922). Upon **return** of said order of arrest, executed in pursuance of the preceding section, the **trial** of said cause shall **proceed, unless** for good cause shown, upon the application of either party, or at the instance of the justice himself, the same shall be **continued,** as provided for in other cases before justices of the peace. And when the trial of said cause is continued for any period, the defendant, upon executing, with one or more sufficient sureties, a written **undertaking** to the effect that he will pay the amount of the judgment that may be rendered against him upon the final determination of the action, or upon depositing in the hands of the justice of the peace the amount of money mentioned in the order of arrest, and the probable amount of costs of suit, shall be forthwith discharged from custody; *Provided, however,* That in no case shall the defendant be detained in the custody of the officer, when said continuance has been for a period of more than forty-eight hours, unless said continuance has been made at the instance or with the consent of the defendant himself.

ARREST AFTER JUDGMENT.

5392 (923). On the judgment against the defendant in any civil suit before a justice of the peace, when the defendant is in the custody of the officer, as hereinbefore provided for, or if, after judgment against him, there is filed in the office of such justice an **affidavit of** the **plaintiff,** his authorized agent or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars mentioned in section nine hundred and seventeen, said justice of the peace shall, unless otherwise ordered by the plaintiff, issue an execution, and accompany the same with an order for the arrest of the defendant.

5393 (924). Said **order** of arrest shall be addressed and delivered, with a copy of the affidavit, to the officer having said execution, and shall state the names of the parties, be signed by the justice issuing it, and state the amount of the judgment and costs unpaid, and shall require the officer, in case the same shall not be paid, or an amount of property of the defendant whereon to levy **execution** sufficient to satisfy the same cannot be found in his county, to arrest the defendant, if not already in the custody of the officer, and deliver him to the sheriff of the proper county, to be committed by him to the jail of the county, and kept in custody until discharged by law; *Provided, however,* That no such order of arrest be issued until the undertaking required by the nine hundred and nineteenth section of this code shall have been executed.

ATTACHMENT.

5394 (925). The plaintiff shall have an order of attachment against the property of the defendant, in a civil action before a justice of the peace, for the recovery of money before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just, the amount which the affidavit believes the plaintiff ought to recover, and the existence of some one or more of the following particulars: *First*—That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the state; or, *Second*—Has absconded, with intent to defraud his creditors; or, *Third*—Has left the country of his residence to avoid the service of a summons; or, *Fourth*—So conceals himself, that a summons cannot be served upon him; or, *Fifth*—Is about to remove his property, or a part thereof, out of the county, with the intent to defraud his creditors; or, *Sixth*—Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh*—Has property or rights in action, which he conceals; or, *Eighth*—Has assigned, removed, or disposed of or is about to dispose of his property, or a part thereof, with intent to defraud his creditors; or, *Ninth*—Fraudulently contracted the debt, or incurred the obligation for which suit is about to be, or has been, brought. When the defendant is a foreign corporation, or a non-resident of the state, the attachment shall not be granted, unless the claim is for a debt or demand arising upon contract, judgment, or decree.

5395 (926). When the ground of attachment is that the defendant is a foreign corporation, or a non-resident of the state, the order of attachment may be issued without an undertaking, but in all other cases the order of attachment shall not be issued by the justice until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Plaintiff need not sign undertaking. Action cannot be maintained on undertaking on ground that attachment was wrongfully issued unless it has been discharged. 27, 614 (43 N. W., 397).

5396 (927). The order of attachment may be be made to accompany the summons, or it may be issued at any time afterwards, before judgment; it shall be addressed and delivered to any constable or sheriff of the proper county, and shall require him to attach the goods, chattels, stocks or interests in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

5397 (928). The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

5398 (929). When there are several orders of attachment against the same person in the hands of the same officer, they shall be executed in the order in which they are received by said officer; he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that, by virtue of said order, he attaches said property at the suit of said plaintiff; and the officer, with two residents of the county, who shall be first sworn and affirmed by the officer, shall make a true inventory and appraisement of all property attached, which shall be signed by the officer and said residents, and returned with the order; when the property can be come at, he shall take the same into his custody, and hold it subject to the order of the justice.

5399 (930). The **officer** shall **deliver** the **property** attached to the person in whose possession it was found, upon the execution by such person, in the presence of the officer, of an **undertaking** to the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

5400 (931). **Different attachments** of the same property may be made, and one inventory and appraisement shall be sufficient. The **lien** of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments. The **justice** who issued the attachment having the priority of lien shall **determine** all questions as to the **priority** of liens on the property attached.

5401 (932). If the **order** of attachment is made to accompany the summons, a copy thereof, and the summons, shall be served upon the defendant in the usual manner for the **service** of a summons, if the same can be done within the county; and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued on the action has not been and cannot be served on the defendant in the county, in the manner prescribed by law, the **justice** of the peace shall **continue** the **cause** for a period not less than forty days nor more than sixty days, whereupon the plaintiff shall proceed for three consecutive weeks to publish, in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a **notice,** stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice; and thereupon said action shall be proceeded with, the same as if summons had been duly served.

5402 (933). When the cause is continued as provided for in the preceding section, and it shall appear that any of the **property** taken under the attachment is live stock, or is of a **perishable** nature, the justice may issue his order, directing the **officer** having the custody thereof to **dispose of** the same as upon execution; and the moneys realized therefrom shall be paid over to the justice, and applied as other money realized from the sale of property attached is applied.

5403 (934). When the plaintiff, his agent or attorney, shall make oath in writing that he has good reason to believe, and does believe, that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such **garnishee** a copy of the order of attachment, with a written **notice,** that he appear before the justice at the return of the order of attachment, and answer as provided in section nine hundred and thirty-six.

5404 (935). The **copy** of the order and the notice shall be **served upon** the **garnishee,** as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier, or managing agent thereof.

5405 (936). The **garnishee** shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not, and, in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

5406 (937). A garnishee may pay the money owing to the defendant by him, to the officer having the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

5407 (938). If the garnishee do not appear and answer, as required by section nine-hundred and thirty-six, the justice may proceed against him by attachment as for contempt.

5408 (939). If the garnishee appear and answer, and it is discovered on his examination that at or after the service of the order of attachment and notice upon him he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

5409 (940). If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing into the court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action in his own name, as in other cases; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff for the amount of property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiff in attachment are satisfied, the defendant in the attachment may, on motion, be substituted as the plaintiff in the judgment.

Court should require garnishee to give undertaking required by statute; but failure to give would not discharge the garnishee. 9, 417 (2 N. W., 866).

5410 (941). Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

5411 (942). If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached, or its proceeds shall be returned to him.

5412 (943). If **judgment** be rendered **for** the **plaintiff,** it shall be **satisfied** as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds shall be returned to the defendant.

5413 (944). The justice may order the **officer** to **repossess himself,** for the purpose **of** selling it, of any of the attached **property** which may have passed out of his hands without being sold or converted into money, and the officer shall, under such order, have the same power to take the property as he would have under an order of attachment.

5414 (945). If any of the **property** which has been attached be **claimed by** any person **other than** the **defendant,** the claimant may have the validity of such **claim tried,** and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

5415 (946). Where **several attachments** are executed on the same property or the same persons are made garnishees, the justice issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and **priorities** of the several attachments, and the proceeds shall be applied accordingly.

5416 (947). The officer shall return upon every **order** of attachment what he has done under it. The **return** must show the property attached and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the order, all undertakings given under it.

5417 (948). An **order** of attachment **binds** the **property** attached **from** the **time of service,** and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section nine hundred and thirty-four; but when property is attached in the hands of a consignee or other person having a prior lien, his lien thereon shall not be affected by the attachment.

5418 (949). If the **defendant** or other person in his behalf, at any time before judgment, cause an **undertaking** to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated in his affidavit to the effect that the defendant shall perform the judgment of the justice, the **attachment** in such action shall be **discharged,** and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of the garnishee in such action, for any property of the defendant in his hands.

5419 (950). If in any case where an order of attachment has been issued by a justice of the peace it shall appear from the return of the officer and from the examination of the garnishee, that no property, moneys, rights, credits, or effects of the defendant have been taken under the attachment, but that the **defendant** is the **owner of** an interest in **real estate** in the county, the justice before whom said action is pending shall, at the request of the plaintiff, forthwith certify his **proceedings** to the **district court** of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court in all **respects** as if the same had originated therein.

CHAPTER III.—BILL OF PARTICULARS.

5420 (951). In all cases before a justice, the **plaintiff**, his agent or attorney, shall **file** with such justice a bill of the particulars of his demand, and the **defendant**, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim as a **set-off**; and the evidence on the trial shall be confined to the items set forth in said bills.

Defendant need not file bill of particulars unless plaintiff demand it. **15**, 441 (19 N. W., 684). Section does not apply to action in replevin. **25**, 106 (41 N. W., 134). A promissory note is a sufficient, if issued on. **14**, 446 (16 N. W., 484); **18**, 184 (24 N. W., 727). Justice having note in his possession may render judgment upon it in absence of the parties. **14**, 446 (16 N. W., 484). It would be improper for a justice to prepare bill of particulars in case before himself. **10**, 491 (6 N. W., 597). Judgment may be rendered on the pleadings. **29**, 487 (45 N. W., 779). Cited, **14**, 249 (15 N. W., 216).

5421 (952). The bill of particulars must **state**, in a plain and direct manner, the **facts** constituting the cause of action, or the claim to be set off.

When bill of particulars fully apprises defendant of the nature of the claim against, will be held sufficient. **21**, 370 (32 N. W., 72). An account is a sufficient statement. **13**, 220 (13 N. W., 175).

5422 (953). The **bill** of particulars may be **amended** at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the items, when, by such amendments, substantial justice will be promoted. If the amendment be made at the time of or during the trial, and it be made to appear to the satisfaction of the justice, by oath, that the adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted. The justice may, also, in his discretion, require, as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required unless an adjournment is made necessary by the amendment.

CHAPTER IV.—CHANGE OF THE PLACE OF TRIAL.

5423 (954). The place of trial may be changed if, on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the **justice** of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case, that such justice is **a** material **witness** for either party, or if a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in the precinct or place for which said justice may have been elected, on account of the **bias** or prejudice of the **citizens** thereof.

Addressed to discretion of the court. **4**, 286. Cannot be granted after judgment by default, though it be set aside. **29**, 688 (46 N. W., 154).

5424 (955). If the **place** of trial be changed on account of the justice being a material witness in the cause, such cause may be **transferred** for trial before some other justice of the peace in the same precinct. If the place of trial be changed on account of the bias or prejudice of the citizens of such precinct or place, the case shall be taken **to** some justice in an adjoining precinct in the same county.

5425 (956). The **justice** granting such change shall deliver or **transmit** the **papers** in the cause, together **with** a certified **transcript** of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein and have the same jurisdiction, powers, and duties, in all respects whatever, as if suit had been originally instituted before him.

5426 (957). Before any such change shall be allowed, the **costs**, as specified in the next following section, shall be paid by the party applying for such change.

5427 (958). When such change is at the instance of the plaintiff, he shall be taxed with all the **costs** which have accrued and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpœnas for witnesses and service thereof, witness fees, and costs of the justice for transferring the cause to the docket of the other justice.

Secs. 5428 and 5429. "An act to allow a change of venue in civil and criminal proceedings before justices of the peace, on account of the interest, bias, or prejudice of the justice." 1871, p. 70. In force March 25.

5428. That in all civil and criminal proceedings before justices of the peace, any defendant in such proceedings may apply for and obtain a change of venue, by filing an **affidavit** in the case made by the defendant, his agent or attorney, stating that the defendant cannot, as affiant verily believes, have a fair and impartial hearing in the case on account of the interest, **bias**, or prejudice of the **justice**, and by paying the costs now required to be paid by defendant on change of venue, for the causes and in the cases mentioned in chapter four of title thirty, part two of the Revised Statutes, and thereupon the **proceedings** shall be **transferred** to the nearest justice of the peace, to whom the said objections do not apply, of the same county, to be proceeded with in the manner pointed out for the transfer and procedure in cases on change of venue for cause mentioned in said chapter four.

This act applies to all proceedings, civil and criminal, before justices of the peace; but a second change in the same proceeding is not allowed for same cause. **10,** 82 (4 N. W., 511). A change of venue to a justice who being unable to try the case by reason of bias or prejudice transferred to nearest justice, held no grounds for dismissal. Proper proceeding would have been to remand. **21,** 152 (31 N. W., 507). These provisions are not applicable to county courts. **10,** 439 (6 N. W., 769).

5429. The **application** shall be **made** before entering upon the merits of the case by the introduction and reception of evidence; and **no second change** of venue shall be allowed for the same cause in the same proceeding.

CHAPTER V.—ADJOURNMENTS.

5430 (959). Upon the return day, if a jury be required, or if the **justice** be actually engaged in other official business, he **may adjourn** the trial without the consent of either party, as follows: *First*—Where a party is in attendance who is not a resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours, and the defendant, if under arrest, to continue in custody. *Second*—In other cases, not to exceed eight days, unless by consent of parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

5431 (960). The trial may be adjourned **upon** the **application of either party,** without the consent of the other, for a period not exceeding thirty days, as follows: the party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial.

May be in language of statute, purport of testimony need not be stated. **28,** 91 (44 N. W., 78). Need not describe testimony sought. Award of costs on continuance discretionary with trial court. **29,** 588 (45 N. W., 929).

5432 (961). An **adjournment** may be had either at the return day or at any subsequent time to which the cause may stand adjourned, on the application of either party, **for** a period **longer than thirty days,** but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof by oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment for want of material evidence, describing it, that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

Affidavit for continuance held insufficient. 27, 497-9 (43 N. W., 344).

CHAPTER VI.—WITNESS.

5433 (962). Any justice may issue **subpœnas** to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

5434 (963). A **subpœna** may be **served** by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

5435 (964). When **not served** by a constable or sheriff, or some person deputed for that purpose by a justice, **no fees** shall be charged in the suit for serving it.

5436 (965). If any **witness**, having been subpœnaed, attend and be **not examined** by either party, the **costs** of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter, or otherwise, render unnecessary the examination of such witness.

5437 (966). Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any **person** has been duly **served** with a subpœna to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he **refuses** or neglects to attend as such witness in conformity with such subpœna, the justice shall issue a warrant for the **arrest** of the delinquent, for the purpose of compelling his attendance, and punishing his disobedience.

5438 (967). When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a **fine** on him not exceeding five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the state of Nebraska against the delinquent, and may be enforced against his person or property.

5439 (968). Every **person subpœnaed** as aforesaid, and **neglecting** to appear, **or refusing** to testify, shall also be **liable to** the **party** in whose behalf he shall have been subpœnaed, for all damages which such party shall sustain by reason of such delinquency.

5440 (969). [**Depositions.**]—Depositions may be **taken** to be read in a cause pending before a justice of the peace, in like manner, and subject to the same restrictions and rules of law, as in cases pending in the district court.

CHAPTER VII.—THE TRIAL AND ITS INCIDENTS.

5441 (970). At the **time** appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

It will be presumed that there was evidence to support the finding of the justice. **21, 523** (32 N. W., 56).

5442 (971). **Where parties agree to enter, without process,** before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if summons had been issued, served, and returned.

5443 (972). **[Jury.]**—In all civil actions, after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, **either party** may **demand** a jury to try the action, which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number. When a jury is demanded, the trial of the **cause** must be **adjourned** until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days the jury must be immediately selected, as herein provided.

5444 (973). The justice shall write in a **panel** the names of eighteen persons, citizens of the county, from which the defendant, his agent or attorney, shall strike one, and then the plaintiff, his agent or attorney, shall strike one, and so on alternately, until each shall have stricken six names, and the remaining six shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party.

Original section provided for a jury of twelve; amended 1869, p. 90.

5445 (974). The justice thereupon shall issue a **summons for** the **jury,** in which the following form shall be observed in substance, as near as practicable: The State of Nebraska, —— County. To any Constable or the Sheriff of said county: You are hereby commanded to summon —— to appear before me at my office, in said county, on the —— day of ——, A. D. ——, at —— o'clock in the ——noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in nowise omit. And have you then and there this writ, with your doings thereon. Given under my hand, this —— day of ——, A. D. ——. ——, Justice of the Peace.

5446 (975). The **officer** shall **serve** such **summons** by a personal service thereof, and return the same, endorsed with the names of the persons summoned, at the time appointed for the trial of the case. **Jurors,** for **neglecting** to attend when properly summoned, or refusing to serve when in attendance, shall be **liable** to the like penalty, and be proceeded against in the same manner, as witnesses who fail to attend or refuse to testify.

Officer cannot demand fees in advance for summoning jurors. **27,** 398 (43 N. W., 177).

5447 (976). The **constable** or sheriff shall be **in attendance** on the court at and during the progress of the trial; and if, from challenge or other cause, the **panel** shall **not** be **full,** he may fill the same in the same manner as is done by the sheriff in the district court.

5448 (977). When a jury shall be in attendance, and the **cause** shall be **continued,** the jurors must attend at the time and place appointed for the trial, without further notice.

5449 (978). If **party object to** the competency of a **juror,** the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath.

5450 (979). The justice shall **administer** an **oath** or affirmation **to** the **jury,** well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence.

5451 (980). After the jury shall have been sworn, they shall sit together and hear proofs and allegations of the parties; and after hearing the same, shall be kept together in some convenient place, under charge of a constable or sheriff, until they have agreed upon their **verdict,** or shall be discharged by the justice.

A county judge or justice of the peace has no authority to instruct a jury. **13,** 255 (13 N. W. 276); **15,** 628 (19 N. W., 487); **27,** 157 (42 N. W., 890).

5452 (981). When the jury shall have agreed upon their verdict, they shall deliver it to the justice, publicly, who shall enter it upon his docket.

Docket entry stating not verdict itself but merely purport thereof, error without prejudice. Where judgment is based on a verdict, justice need not make findings. **24,** 830 (40 N. W., 416). Not proper to arrive at verdict by dividing sum of estimates of each juror by whole number of jurors. **27,** 157 (42 N. W., 890).

5453 (982). Whenever the justice shall be satisfied that a jury, sworn in any cause before him, cannot agree in the verdict, after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury, as hereinbefore provided. The cause shall be continued to such time as the justice thinks reasonable, unless the parties, or their attorneys, agree on a longer or shorter time, or unless they agree that the justice may render judgment on the evidence already before him.

5454 (983). It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have three day's notice.

This section applies to county court. **12,** 479 (11 N. W., 738). See **23,** 545 (37 N. W., 310).

5455 (984). The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

5456 (985). If either the plaintiff or defendant, in his bill of particulars, claims more than twenty dollars, the case may be appealed to the district court; but if neither party demands a greater sum than twenty dollars, and the case is tried by a jury, there shall be no appeal.

Justice not required to approve bond unless filed within ten days from rendition of judgment. **21,** 528 (32 N. W., 561).

5457 (986). If, on an appeal by the plaintiff, * from a judgment in his favor,* he shall not recover a larger sum than twenty dollars exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the district court, including a fee of five dollars to the defendant's attorney; and in case the defendant shall demand a set-off greater than twenty dollars, and he appeals from a judgment in his favor, and does not recover twenty dollars, he shall, in like manner, pay all costs in the appellate court, including a like fee to the plaintiff's attorney.

* to * inserted 1881, p. 210. Does not apply to replevin. **7,** 19. The language of this section said to be too plain to admit of construction and application of it made. **10,** 509 (7 N. W., 284. Cited, **29,** 141 (45 N. W., 273).

5458 (987). Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the cost bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

5459 (988). In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice, upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill, containing such exception, if truly alleged, with the point decided, so that the same may be made part of the record in the cause.

ARBITRATIONS.

5460 (989). At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of three disinterested men, who shall be chosen by the parties; and if the **arbitrators** be present they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue **summons** for them to attend at the time and place appointed for the trial, which shall be served by any constable, sheriff, or the parties, as they may agree. The **fees** of arbitrators shall be the same as that paid to jurors.

5461 (990). When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their **award** in writing, which shall be valid when signed by any two of them, and return the same to the justice, who shall thereupon enter such award upon his docket, and thereon render judgment and issue execution as in other cases.

5462 (991). Every **judgment** rendered **on** such **award** shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days of the rendition of the same, or to the district court, on appeal, that such award was obtained by fraud, corruption, or other undue means.

5463 (992). Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such **award** was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to **set aside** such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

Award not set aside because it states facts separately from conclusions of law. 24, 393 (38 N. W., 843).

5464 (993). But no **appeal** shall be allowed to the district court from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an **affidavit,** therein stating that he or she does verily believe that such award was obtained by fraud, corruption, or other undue means.

5465 (994). And if on appeal from the judgment of a justice rendered on any such award, the **district court** shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall **set aside** the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

5466 (995). But if the court shall be of the opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render **judgment thereon** for the costs of suit and award execution as in other cases.

TRIAL OF THE RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

5467 (996). When a constable or sheriff shall levy on or attach property claimed by any person or persons other than the party against whom the execution or attachment issued, the claimant or **claimants** shall give three days' **notice,** in writing, **to** the **plaintiff** or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property.

5468 (997). If, on the trial, the justice shall be satisfied from the proof that the property, or any part thereof, belongs to the claimant or **claimants** *(or in case when a jury is demanded, the jury so find), such justice shall render **judg-**

ment against the party in whose favor such execution or attachment issued **for** the costs and issue execution therefor, and shall, moreover, give a written order to the officer who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants.

Parenthetical clause at * inserted 1875, p. 43.

5469 (998). But if the claimant or claimants fail to establish his or their right to such property, or any part thereof, the justice shall render **judgment against** such claimant or **claimants** for the costs that have accrued on account of such trial, and issue execution therefor; and the officer shall not be liable to the claimant or claimants for the property so taken.

The proceeding under this statute is a summary one, is not a "civil action," and is not properly triable by a jury. **10,** 50 (4 N. W., 317). See sections 5017–8. Where jury finds against claimant and judgment is rendered theron, he cannot afterwards maintain replevin against the officer. **13,** 519 (14 N. W., 474). For action on undertaking, see **12,** 160 (10 N. W., 536).

CHAPTER VIII.—JUDGMENTS.

5470 (999). Judgment that the **action** be **dismissed without prejudice** to a new action, may be entered with costs in the following cases: *First*—When the plaintiff voluntarily dismisses the action before it is finally submitted. *Second*—When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

5471 (1000). If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed, and there be no evidence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, or **if either party fail to attend** at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bill of particulars and proofs.

5472 (1001). When judgment shall have have been rendered **against a defendant in his absence,** the same may be **set aside** upon the following conditions: *First*—That his motion be made within ten days after such judgment was entered. *Second*—That he pay or confess judgment for the costs awarded against him. *Third*—That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial, at least five days before the time, if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial.

Does not apply to plaintiffs. **25,** 98 (41 N. W., 131). Applicable to county courts regardless of amount in controversy. **11,** 239 (9 N. W., 92). Defendant, on compliance with this section, can have default set aside as a matter of right. **12,** 53 (10 N. W., 534); **7,** 476. Where defendant has appeared once, but is absent at rendition of judgment, he cannot vacate it, but must appeal. **12,** 423 (11 N. W., 867); **17,** 304 (22 N. W., 567); **23,** 494 (36 N. W., 816); **29,** 189 (45 N. W., 284). Where one default has been vacated and another is entered defendant cannot have it set aside too. **16,** 265 (20 N. W., 208). Defendant filed a motion for security for costs but failed to appear on the day set for trial; held, that he could not have judgment set aside. **14,** 236 (15 N. W., 350). When party appears and files motion to dismiss action, which is overruled, but fails to appear at time set for hearing, and judgment is rendered against him before time for appearance expires, he can appeal to the district court. **14,** 250 (15 N. W., 216). Answer should be filed with motion to set aside default. **20,** 417 (30 N. W., 411). Must be a conditional order. **19,** 588 (27 N. W., 635). See **22,** 194 (34 N. W., 359); **27,** 493 (43 N. W., 242).

5473 (1002). **Upon** a **verdict,** the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the defendant has been arrested or his property attacked; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

Immediately does not mean *to-morrow* but *now*. **16**, 642 (21 N. W., 437). If verdict is returned to justice on Sunday, he should immediately render judgment upon it. **13**, 288 (13 N. W., 626). Trial commenced at 1 o'clock P. M., without a jury. At conclusion of trial justice took case under advisement until 8 o'clock the following morning, when judgment was rendered; eld, hthat it was rendered "immediately" within the meaning of the statute. **14**, 151 (15 N. W., 230). Judgment without finding is not void. **12**, 378 (11 N. W., 464). Judgment may be rendered on pleadings. **29**, 487 (45 N. W., 779).

5474 (1003). **When** the **amount** due to either party **exceeds** the **sum** for which the justice is **authorized** to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount witheld.

5475 (1004). If the defendant, at any time before trial, offer, in writing, **to allow judgment to be taken** against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. But if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it cannot be given in evidence, to affect the recovery, otherwise than as to costs as above provided.

An unsigned offer to confess is not sufficient. **15**, 624 (19 N. W., 709). Where docket entry shows that an offer to confess was made and refused, presumption is that it was made in writing. If plaintiff does not recover more than offer, costs will be taxed against him. **21**, 155 (31 N. W., 510). Need not be renewed in appellate court. **8**, 340. Plea of tender is very different from offer to allow judgment to be taken. The former admits that amount tendered is due, while the latter admits nothing. **10**, 170 (4 N. W., 319, 953). See **29**, 142 (45 N. W., 273).

5476 (1005). Where judgment is rendered in a case where the **defendant** is **subject to arrest** and imprisonment, it must be so stated in the judgment, and entered in the justice's docket.

CHAPTER IX.—APPEALS.

5477 (1006). In all cases, not otherwise specially provided for by law, **either party** may appeal from the final judgment of any justice of the peace, to the district court of the county where the judgment was rendered.

Appeal only lies from a final judgment of a justice of the peace; and a judgment for costs merely, on verdict of jury in favor of defendant, is not a final judgment. **10**, 511 (7 N. W., 289). Appeal does not lie from judgment by default, but plaintiff may waive this provision, and does waive it by treating the appeal as valid. **11**, 48 (7 N. W., 531). Right to appeal if motion for change of venue has been filed. **20**, 184 (29 N. W., 298). Judgment dismissing an action and for costs is a final judgment. **11**, 363 (9 N. W., 547). Must be tried on same issues in district court as in county court, unless some matter has arisen since the trial, such as payment, release, etc. **20**, 636 (31 N. W., 109); **12**, 137 (10 N. W., 576).

5478 (1007). The **party appealing** shall, within ten days from the rendition of judgment, enter into an **undertaking** to the adverse party, with at least one good and sufficient surety to be approved by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of judgment and costs, **conditioned:** *First*—That the appellant will prosecute his appeal to effect and without unnecessary delay. *Second*—That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs. Such undertaking need not be signed by the appellant.

Time computed by sec. 5362. **8**, 362. District court cannot allow an appeal after four years on the ground of fraud. **28**, 415 (44 N. W., 486). Sureties in appeal bond bound, though appeal dismissed for irregularities. **18**, 541 (26 N. W., 316); **14**, 347 (15 N. W., 708). Cited, **24**, 524 (39 N. W., 433); **14**, 231 (15 N. W., 236).

5479 (1008). The said justice shall make out a certified **transcript** of his proceedings, including the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant or his agent; who shall deliver the same to the clerk of the court to which such appeal may be taken, within thirty days next following the rendition of such judgment; and such justice shall also deliver or transmit the bill or bills of particulars, the depositions, and all other original papers, if any used on the trial before him, to such clerk on or before the second day of such term; and all other proceedings before the justice of the peace in that case shall cease and be stayed from the time of entering into such undertaking.

Amended 1877, p. 15. Appellant has until the second day of succeeding term in which to file his transcript. **22,** 489 (35 N. W., 218). Not to be dismissed unless delay in filing transcript continued longer than second day of next succeeding term. **8,** 149. If filed within thirty days district court has jurisdiction. **22,** 724 (36 N. W., 153). If the transcript was on file by the second day of the next term after the thirty days, under the old law it was sufficient. **23,** 563 (37 N. W., 320). If appellant fails to file transcript, and appellee does so and obtains judgment, in order to vacate it appellant must apply to district court for relief. **24,** 647 (39 N. W., 843).

5480 (1009). The **clerk,** on receiving such transcript and other papers as aforesaid, shall file the same and **docket** the **appeal.**

5481 (1010). The plaintiff in the court below shall be the plaintiff in the district court; and the **parties** shall proceed, in all respects, in the same manner as though the action had been originally instituted in the said court.

The case must be tried on same issues as in lower court. **17,** 171 (22 N. W., 355); **21,** 361 (32 N. W., 66). Cited, **12,** 393 (10 N. W., 705).

Sec. 5482. "An act to provide for the **time for filing pleadings** in cases of appeals from the county court and justices of the peace." 1877, p. 17. In force June 1.

5482. That in all cases of **appeal** from the county court or a justice of the peace, the plaintiff shall, within twenty days from and after the filing of his transcript in the district court as required by law, file his petition as required in civil cases in the court to which such appeal is taken; and the answer shall be filed and issue joined as in cases commenced in such appellate court.

New pleadings not necessary in forcible entry and detention cases. **16,** 575 (21 N. W., 1). Cited, **27,** 493 (43 N. W., 242).

5483 (1011). **If** the **appellant** shall **fail to deliver** the **transcript** and other papers, if any, to the clerk, and have his appeal docketed as aforesaid within thirty days next following the rendition of said judgment, the **appellee may,** at the first term of the district court after the expiration of thirty days, **file** a transcript of the proceedings of such justice, and the said cause shall, on motion of said appellee, be docketed; and the court is authorized and required, on his application, either to enter up a judgment in his favor similar to that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon, or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken; and if the plaintiff in the action before the justice shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed according to the provisions of this chapter, shall fail to file his petition within twenty days thereafter, unless the court, on good cause shown, shall otherwise order, or otherwise neglect to prosecute the same to final judgment, the said plaintiff shall become nonsuited, and it shall be the duty of said court to render judgment against such appellant for the amount of the judgment rendered against him by the justice together with interest accrued thereon, and for costs of suit, and to award execution therefor, as in other cases.

Amended 1887, p. 652. Transcript must be delivered within thirty days next following rendition of judgment. **25,** 38 (40 N. W., 594). Failure to perfect appeal not ground for dismissal unless willful or appeal not made in good faith. **20,** 318 (30 N. W., 63). No sufficient excuse for failing to file in time, that transcript was mislaid by one in charge of attorney's office. **27,** 877 (44 N. W., 45). General appearance of defendant cures defect in failing to file transcript within thirty days. **29,** 190 (45 N. W., 284). Held constitutional, see **25,** 457 (41 N. W., 280). Unauthorized dismissal of appeal. **27,** 493 (43 N. W., 242). Appellee may exert this right at a subsequent term. **23,** 460 (36 N. W., 661). See **22,** 201 (34 N. W., 362); **24,** 648 (39 N. W., 843).

5484 (1012). **If both** parties **fail to enter** such **appeal** within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment in the same manner as if such appeal had never been taken.

5485 (1013). If any **person appealing** from a judgment rendered in his favor shall not recover a greater sum than the amount for which judgment was rendered, besides **costs** and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

5486 (1014). When any **appeal** shall be **dismissed,** or when judgment shall be entered in the district court against the appellant, the **surety in** the **undertaking** shall be **liable** to the appellee for the whole amount of the debt, costs, and damages, recovered against the appellant.

5487 (1015). When an **appeal** taken to the district court shall there be **quashed,** by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such **justice,** who shall thereupon **proceed** to issue execution in the same manner as if no appeal had been taken.

Not necessary to except to ruling of court in dismissing appeal. **4,** 375.

5488 (1016). In proceedings on appeal when the surety in the **undertaking** shall be insufficient or such undertaking may be insufficient in form or amount, it shall be lawful for the court, on motion, to order a change or **renewal** of such undertaking, and direct the same to be certified to the justice from whose judgment the appeal was taken, or that it be recorded in said court.

Appellant obtained leave to file additional security within a limited time. Not complying was granted further time. Held, not error. **22,** 680 (35 N. W., 940).

5489 (1017). **Appeals** in the following cases shall **not** be **allowed:** *First*—On judgments rendered on confession. *Second*—In jury trials, where neither party claims in his bill of particulars a sum exceeding twenty dollars. *Third*—In trials of the right of property, under the statutes, either levied upon by execution or attached.

Original section excepted also forcible entry and detainer. Omitted, 1885, p. 385. Party who sues for $20 and obtains verdict for $15, cannot defeat defendant's right of appeal by filing amended bill of particulars claiming but $19. **29,** 368 (45 N. W., 684).

5490 (1018). **When** the **term** of office **of** a **justice** shall **expire between** the date of the **judgment and** the time limited for **appeal,** such justice may take the undertaking for appeal at any time before he has delivered the docket to his successor, and give the appealing party a transcript. After the delivery of the docket the undertaking shall be given to his successor, and it shall be his duty to give the transcript, and do and perform all things required of his predecessor.

CHAPTER X.—OF THE ACTION FOR THE FORCIBLE ENTRY AND DETENTION, OR FORCIBLE DETENTION ONLY, OF PROPERTY.

5491 (1019). Any **justice,** within his proper county, shall have **power to inquire,** in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into the lands or tenements, unlawfully and by force hold the same; and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

County court has jurisdiction. Judgment of nonsuit on the ground that county court had no jurisdiction is no bar to another suit. **11,** 321 (9 N. W., 41). In this action notice to quit must be given, and the rights of the plaintiff and defendant will be inquired into and protected, and the judgment of the trial court may be reviewed on error. **14,** 510 (16 N. W., 832). Notice to quit and complaint must particularly describe the premises; but if they fail to do so and the description given includes the premises in controversy and no objection is made to the form of either in the trial court, it will be waived. **12,** 489 (11 N. W., 743). A party who has never been in possession of land, cannot maintain an action against the owner of the fee for an alleged forcible entry and detention. **14,** 198 (15 N. W., 348). Must charge in petition that premises are unlawfully held. **9,** 150 (1 N. W., 978). In a civil action, plea of not guilty places burden on plaintiff. **23,** 403 (36 N. W., 566). Action does not lie against party in possession claiming interest in land. **24,** 768 (40 N. W., 285). Where both parties claim the land itself, the action will not lie. **13,** 390 (14 N. W., 166); **5,** 421; **11,** 528 (10 N. W., 409); **20,** 364 (30 N. W., 257). Alleged contract to pay tenant for improvements *held*, under the facts, not to constitute a defense. **24,** 131 (37 N. W., 939). Forcible detention will not lie against party in possession under a contract of sale. **22,** 234 (34 N. W., 368); **16,** 345 (20 N. W., 393). Verdict will not be reversed unless it is clearly wrong when there are no errors of law. **11,** 265 (9 N. W., 97). Determines only the right of possession. **9,** 145 (1 N. W., 999). See **22,** 284 (34 N. W., 634); **27,** 800 (44 N. W., 291).

5492 (1020). **Proceedings** under this article **may be had** in all cases **against** tenants holding over their terms; in sales of real estate on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree by virtue of which such sale was made; in sales by executors, administrators, or guardians, and on partition, where any of the parties to the partition were in possession at the commencement of the suit, after such sale so made, on execution or otherwise, shall have been examined by the proper court, and the same by such court adjudged legal; and in cases where the defendant is a settler or occupier of lands or tenements, without color of title, and to which the complainant has the right of possession. This section shall not be construed as limiting the provisions of section one thousand one hundred and nineteen.

But title cannot be tried by. **28,** 470 (44 N. W., 487).

5493 (1021). A **tenant** shall be deemed to be **holding over** his term whenever he has failed, neglected, or refused to pay the rent, or any part thereof, when the same was due, and * **judgments,** either before the justice or in the district court, under this chapter, shall **not be a bar** to any after action brought by either party.

All before * added 1875, p. 43. Tenant in default of payment, action may be commenced after the three days' notice to quit. **21,** 64 (31 N. W., 266). See **25,** 511 (41 N. W., 360).

5494 (1022). It shall be the duty of the party desiring to commence an action under this chapter, to notify the adverse party to leave the premises for the possession of which the action is about to be brought, which **notice** shall be **served** at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he cannot be found.

Notice to quit must contain specific time at which possession must be given. **22,** 309 (34 N. W., 636). Sufficiency of notice. **20,** 209 (29 N. W., 474). Notice signed by agent good. **23,** 257 (36 N. W., 508). Tenant from year to year entitled to six months' notice. **21,** 180 (31 N. W., 687). Occupant entitled to three full days' notice. **9,** 143 (1 N. W., 999). Notice to quit may be served as well before as after the expiration of the term. **14,** 437 (16 N. W., 438).

5495 (1023). The summons shall not issue until the plaintiff shall have filed his **complaint** in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall **set forth** either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record.

Must particularly describe the premises sought to be recovered. **9,** 151 (1 N. W., 978).

5496 (1024). The **summons** shall be issued and directed, shall state the cause of the complaint, the time and place of trial, and shall be served and returned as in other cases. Such **service** shall be three days before the day of trial appointed by the justice.

5497 (1025). **If** the **defendant does not appear** in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present.

5498 (1026). No **continuance** shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an **undertaking** to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

5499 (1027). If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the **justice** shall **try** the **cause**; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general **judgment** against the defendant and in favor of the plaintiff, for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

5500 (1028). If a **jury** be **demanded** by either party, the proceedings until the empaneling thereof shall be in all respects as in other cases. The jury shall be sworn or affirmed to well and truly try and determine whether the complaint of (naming the plaintiff), about to be laid before them, is true according to the evidence. If the jury shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true.

Justice cannot charge the jury as to the law. **15**, 628 (19 N. W., 487).

5501 (1029). The **justice** shall enter the **verdict** upon his docket, and shall render such **judgment** in the action as if the facts authorizing the finding of such verdict had been found to be true by himself.

5502 (1030). **Exceptions** to the opinion of the justice, in cases under this chapter, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise, *or either may **appeal** from the judgment rendered by such justice by giving bond, with two responsible sureties to be approved by the justice, conditioned: If the plaintiff appeals, to satisfy the final judgment and costs; if the defendant appeals, to satisfy the final judgment and costs, and pay a reasonable rent for the premises during the time he wrongfully withholds the same.

All after * added 1883, p. 327. Duty of justice to approve bond. Sureties need not sign in presence of justice; objection to signatures must be made, if at all, when bond is presented. **24**, 320 (38 N. W., 832).

5503 (1031). Where a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a **writ of execution** thereon, which shall be in the following form, as near as practicable: The State of Nebraska, —— County, ss. To any Constable or Sheriff of —— County: Whereas, In a certain action for the forcible entry and detention (or the forcible detention, as the case may be) of the following described premises, to-wit: —— lately tried before me, wherein —— was plaintiff, and —— was defendant, judgment was rendered on the —— day of ——, A. D. ——, that the plaintiff have restitution of said premises; and also that he recover costs in the sum of ——. You therefore are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid and all accruing costs; and of this writ make legal service and due return. Witness my hand, this —— day of ——, A. D. ——. ——, Justice of the Peace.

Upon reversal by supreme court after writ is issued, defendant should be restored to possession. **29,** 258 (45 N. W., 685).

5504 (1032). The **officer** shall, within ten days after receiving the writ, **execute** the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the **costs,** and make returns as upon other executions. If the officer shall receive a notice from the justice that the **proceedings** have been **stayed** by an allowance of a writ of error, he shall immediately delay all further proceedings upon the execution; and if the premises have been restored to the plaintiff he shall immediately place the defendant in the possession thereof, and return the writ, with his proceedings and costs taxed thereon.

CHAPTER XI.—OF THE REPLEVIN OF PROPERTY.

5505 (1033). The plaintiff may recover possession of specific personal **property** of less **value** than two hundred dollars, before a justice of the peace, as herein provided.

Amended 1881, p. 208. Defective bill of particulars not sufficient ground for rendering judgment for defendant. **29,** 589 (45 N. W., 929).

5506 (1034). An action for this purpose shall not be brought until there is filed in the office of the justice an **affidavit** of the plaintiff, his agent or attorney, showing: *First*—A description of the property claimed. *Second*—That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property. *Third*—That the property is wrongfully detained by the defendant. *Fourth*—That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other *mesne* or final process issued against said plaintiff.

5507 (1035). Upon such affidavit being made and filed with the justice, he shall issue a **summons** as in other cases, but in addition commanding the officer imediately to seize and take into custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver the same to the plaintiff.

5508 (1036). The constable or sheriff shall execute the **writ** by taking the property therein mentioned; he shall also deliver a copy of the summons to the person charged with the unlawful detention of property, or leave such copy at his usual place of residence; and shall make return of the time and manner of **service,** the appraisement of property, and any undertaking taken by him.

The writ protects the officer if he levies upon the property described, no matter whose property it may prove to be. **14,** 140 (15 N. W., 332).

5509 (1037). The officer shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the **plaintiff** a written **undertaking** to the defendant, in at least double the value of the property taken, but in no case less than fifty dollars, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him.

Sureties must be residents of the county. **23,** 166 (36 N. W., 380). Sureties not liable unless there was a judgment to appeal from. **23,** 164 (36 N. W., 463). **13,** 516 (14 N. W., 483).

5510 (1038). For the purpose of fixing the amount of the undertaking, the **value of** the **property** taken shall be **ascertained** by the oath of two responsible persons, whom the officer shall swear truly to assess the value thereof.

No authority for reappraisement. **29,** 589 (45 N. W., 929).

5511 (1039). Whenever the appraised value of the property so taken shall exceed two hundred dollars, the justice shall certify the proceedings upon the said writ to the district court of his county, and thereupon shall file the original papers, together with a certified transcript of his docket entries, in the clerk's office of the said court; the case there to be for trial at the first term of said court on the original papers without further pleadings, except by the leave of the court granted on sufficient showing.

Amended 1881, p. 209; 1887, p. 653.

5512 (1040). If the **undertaking** required by section one thousand and thirty-seven be **not given** within twenty-four hours from the taking of the property under said order, the **officer** shall **return** the **property** to the defendant. And if the officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Justice has jurisdiction until property is found to be worth over $200, and then to certify it up. **25,** 105 (41 N. W., 134). Cited, **13,** 516 (14 N. W., 483).

5513 (1041). If the **property** has been **delivered to** the **plaintiff,** and judgment be rendered against him, or if he otherwise fail to prosecute his action to final judgment, the justice shall, on application of the defendant or his attorney, impanel a **jury** to **inquire into** the **right of property** and right of possession of the defendant to the property taken. If the jury shall be satisfied that the said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled only to the possession of the same, at such time, then in either case they shall assess such damages for the defendant as are right and proper, for which, with costs of suit, the court shall render judgment for the defendant. And in all cases where the property has been delivered to the plaintiff, unless the jury shall find for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant, for which, with costs of suit, the court shall render judgment for the defendant.

5514 (1042). In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on trial or on inquiry of damages, they shall assess adequate **damages** to the plaintiff **for** the illegal **detention** of the property, for which, with costs of suit, the justice shall render judgment against the defendant.

Where the jury find for plaintiff and assess his damages it is not error for them to fail to find whether he had right of property or of possession. **28,** 141 (44 N. W., 86). "I do find for the plaintiff and against the defendants for the goods and for all the costs of this action expended." *Held*, sufficient to sustain a judgment in justice court for the plaintiff. A finding by a justice that the *possession* of the property was in plaintiff at commencement of the action will not sustain a judgment in favor of the plaintiff. **14,** 451 and 448 (16 N. W., 824 and 825).

5515 (1043). When the **property** claimed has **not** been taken, or has been **returned to** the **defendant,** for want of the undertaking required by section one thousand and thirty-nine, the **action** may proceed as one **for damages only,** and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by said section, the plaintiff shall pay all costs made by taking the same.

5516 (1044). The **officer executing** the **writ** may **break open** any **building** or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure, and the delivery of the property after having demanded the same.

5517 (1045). No **suit** shall be instituted **on** the **undertaking** given under section one thousand and thirty-seven before an execution, issued on a judgment in favor of the defendant in the action, shall have been returned that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

5518 (1046). If any justice shall issue a **writ** to replevin property, as is provided by this chapter, **without** the **affidavit** being made and filed in his office as is provided by section one thousand and thirty-four, the same shall be set aside at his costs, and he shall be liable in **damages** to the party injured.

CHAPTER XII.—EXECUTION—RETURN—STAY OF EXECUTION—NOTICE OF SALE—DELIVERY—UNDERTAKING.

5519 (1047). **Execution** for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on error or appeal, or docketed therein, or during the time it may be stayed, as provided by this title), **may issue** by the justice before whom the judgment was rendered, or by his successor in office on the application of the party entitled thereto, **at any time** within five years of entry of the judgment, or the date of the last execution issued thereon.

No priority in executions in officer's hands on same day. **17,** 217 (22 N. W., 457).

5520 (1048). It shall be the duty of the justice, if the case be not appealed, taken up on error, docketed in the district court, or bail has not been given for the stay of execution, at the expiration of ten days from the entry of the judgment, to issue **execution, without** a **demand,** and proceed to collect the judgment, unless otherwise directed by the judgment creditor.

5521 (1049). Any person against whom judgment may be rendered under the provisions of this title, except as hereinafter excepted, may have **stay** of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest, and costs, and costs that may accrue, which undertaking shall be entered on the docket of the justice, and be signed by the surety.

Principal need not sign stay bond. **28,** 800 (45 N. W., 52).

5522 (1050). The **stay** of execution hereby authorized shall be **graduated** as follows, namely: *First*—On any judgment for $10 and under, the stay shall be for sixty days. *Second*—On any judgment exceeding $10, and under $50, the stay shall be for ninety days. *Third*—On any judgment exceeding $50 and under $100, the stay shall be for six months. *Fourth*—On any judgment exceeding $100 and not exceeding $200, the stay shall be for nine months. *Fifth*—Where judgment is rendered against a surety and he takes a stay thereon, and he obtains a judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long that the stay will expire one month before that allowed to the surety on the judgment against him.

Amended 1885, p. 386.

5523 (1051). **No stay** of execution on judgments rendered in the following cases shall be **allowed:** *First*—On judgments rendered against justices of the peace, for refusing to pay over money by them collected or received in their official capacity. *Second*—On any judgment rendered against an officer for failing to make return, making a false return, or refusing to pay over money collected in his official capacity. *Third*—On judgments against bail for the stay of execution. *Fourth*—Where judgment is rendered in favor of bail, who have been compelled by judgment to pay over money on account of their principal. *Fifth*—On judgments obtained by constables or sheriffs, on undertakings executed to them for the delivery of property.

5524 (1052). If the **execution issued before** the undertaking for **stay**, or that required in case of appeal, be given, and such undertaking be given afterwards and within the time allowed, the **justice** shall **recall** the execution.

5525 (1053). Where any person who has become **bail** for stay of execution shall **remove out of** the **county** before the expiration of such stay, the justice shall, on demand, issue execution against the goods and chattels of the defendant or other party against whom the original judgment was rendered, to be proceeded with as in other cases.

5526 (1054). When any **surety** for the stay of execution shall become **apprehensive** that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file **affidavit** of that fact before the justice on whose docket the judgment is entered; whereupon such justice shall issue **execution** against the judgment debtor, which shall be proceeded in as in other cases; *Provided*, Such bail shall not thereby be discharged from liability, but may be proceded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

5527 (1055). If the judgment debtor shall, within ten days after levying such execution, enter into a **further undertaking** for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay costs of the execution issued against him, as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be proceeded against, until it shall appear by the return of the officer that he or she has no goods whereon to levy, before proceedings shall be instituted on the undertaking first given.

5528 (1056). When any **judgment** shall be obtained **against** any person who shall have entered himself **bail** on the docket of any justice of the peace, agreeably to the provisions of this title, the original judgment shall remain good and valid in law, for the use of such bail, who, at any time thereafter, may sue out execution on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so endorsed by the justice, and such bail shall also be entitled to a transcript of such judgment, for his own use, which shall have the same force and effect as transcripts in other cases.

5529 (1057). At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give **additional surety,** on or by the third day after the giving of such notice; such facts shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the execution shall be recalled and stayed until the expiration of the original stay.

5530 (1058). The **execution** must be **directed** to a constable or sheriff of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly **refer** to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when, it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount due thereon. It must **require** the officer substantially as follows: *First*—If it be a case where the defendant cannot be arrested, it must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto. *Second*—If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal, subject to execution within the jurisdiction, shall be exhausted before any property of the bail shall be taken in execution. *Third*—If it be a case where the defendant may be arrested, in addition to the foregoing it must direct the officer, if sufficient property of the defendant subject to the execution cannot be found to satisfy the judgment, that he arrest the debtor and commit him to the jail of the county until he pay the judgment, or be discharged according to law, unless the execution be accompanied by an order of arrest, as provided in sections nine hundred and twenty-three and nine hundred and twenty-four. *Fourth*—It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

5531 (1059). Upon an **execution** on a judgment **against joint debtors**, upon one or more of whom the summons was not served, the execution must contain a direction to collect the amount out of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. If such judgment be also such that the defendants are subject to **arrest** thereon, the justice must further specify the names of those defendants served with the summons, who may be arrested for want of property.

5532 (1060). The **officer** may, at his peril, omit to **arrest a debtor,** or after arrest suffer him to go at large before the return day, subject only for his **liability** for an escape, or for omitting to arrest, if he fail to have either the money or the person of the debtor in custody at the expiration of thirty days.

5533 (1061). It shall be lawful for the sheriff or jailer receiving any **person imprisoned** on execution issued in any civil proceeding, at any time when there is no money in his hands to pay for the sustenance of such prisoner, to **discharge** him from prison. The jailer may, however, detain such prisoner, the adverse party being liable for such sustenance.

5534 (1062). The **debtor** committed as herein provided may be **held in prison** ten days, and, if he be a person without a family for which he provides, one day in addition for every dollar over ten, due on the execution; or, if he has a family for which he provides, one day in addition for every two dollars over twenty, due on the execution.

5535 (1063). The **affidavit of** an imprisoned **debtor** that he has a family for which he provides, specifying by name one or more persons, members of such family, and the place of their residence, is sufficient evidence thereof to authorize his **discharge** by the jailer.

5536 (1064). The **officer** is **liable** to the party in whose favor an execution issued to him for the amount thereof, in the following **cases:** *First*—Where he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him. *Second*—Where he willfully and carelessly omits to levy on property within thirty days, or if the defendant be liable to be imprisoned, then to arrest and commit him to the jail of the county within thirty days.

5537 (1065). When an **execution** shall be returned **unsatisfied** for the want of goods and chattels, the justice shall, unless otherwise directed by the party for whom the execution issued, commence an **action on** the **undertaking** for the stay of execution, and so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment for the amount remaining due.

5538 (1066). Where **bail** is given **for** the **stay** of execution, and the **defendant** against whom the judgment was rendered shall **die** before the same is satisfied, the creditor may proceed against the surety in the undertaking in like manner as if execution had been issued against the defendant, and returned not satisfied for want of goods and chattels whereon to levy.

SALE ON EXECUTION.

5539 (1067). All **property** taken in execution under the provisions of this title shall be **advertised** for sale at four of the most public places within the precinct **where** such property was seized, at least ten days previous to the time appointed for such **sale,** which shall be held within the hours of ten o'clock A. M. and four o'clock P. M., at the house, or on the premises, where such property was taken, or at one of the most public places within the precinct.

See 23, 744 (37 N. W., 639).

5540 (1068). It shall **not** be **lawful for** any justice of the peace who issued the execution, nor for the **officer** holding the execution, **to purchase,** either directly or indirectly, any property sold on such execution. And any justice or officer who shall offend against the provisions of this section shall forfeit and pay, for every such offense, any sum not exceeding one hundred dollars nor less than five dollars, to be recovered by civil action, in the name of the state of Nebraska, before any court having jurisdiction thereof, for the use of the county where such offense was committed; and shall, moreover, be liable to the action of the party issued thereby.

5541 (1069). When any cattle, or other **live stock,** shall be **taken in execution,** it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment whereon such execution issued, to allow the officer for **keeping** the same a reasonable **compensation,** to be taxed and collected as other costs in the suit.

5542 (1070). When a constable or sheriff shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution in virtue of which such sale was made, a true **inventory of** all such **property,** and of each article thereof, and the price at which the same was sold.

5543 (1071). Where a constable or sheriff shall have levied on any **goods** and chattels which remain **unsold** for want of bidders or other just cause, it shall be his duty to return, with the execution, a **schedule** of all such goods and chattels. And the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent, immediately thereafter issue an order, thereby commanding any officer to whom the same may be directed or delivered, to expose such property for **sale;** which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution.

5544 (1072). Any **officer** having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is hereby authorized to take such **security** for his own indemnity as he may require that such property shall be delivered at the time and place appointed for the sale thereof.

The giving of this bond is not a waiver of exemptions. **15,** 439 (19 N. W., 644).

5545 (1073). In all cases where any lands may have been let, reserving rent in kind, and when the **crops** or emblements growing or grown thereon shall be **levied on** or attached, by virtue of any execution, attachment or any other process against the landlord or tenant, the interest of such landlord or tenant, against whom such process did not issue, shall not be affected thereby.

In order to hold a lien on crop for money rent, lease must be of record before rights of third parties intervene. **28,** 175 (44 N. W., 106).

5546 (1074). In cases where the constable or sheriff shall make it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by this chapter, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue **further process** of execution for the amount of balance remaining unsatisfied, which shall be served and returned, in all respects, as other executions are under this chapter.

CHAPTER XIII.—OF CONSTABLES, SHERIFFS, AND THEIR DUTIES.

5547 (1075). All constables and sheriffs shall be **ministerial officers** in justices' courts, in their respective counties, in civil and criminal cases, and civil and criminal **process** may be executed by them throughout the county.

5548 (1076). It shall be the **duty** of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever to do and perform all things pertaining to the office of constable. And sheriffs shall have all the **powers** and be subject to all the liabilities of constables in the service and return of all processes issued by justices of the peace in their respective counties.

5549 (1077). In discharging their duties, constables may call to their **aid** the **power of** the **county,** or such assistance as may be necessary. It shall be the duty of every constable or sheriff to make due **return of** all **process** to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed or stayed, upon which he has an execution, on notice thereof to return the execution, stating thereon such fact.

5550 (1078). It shall be the duty of every constable or sheriff, on the **receipt of** any writ or other **process** (subpœnas excepted), to **note** thereon the **time** of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

5551 (1079). No officer shall make a **return** on any process **of "not found,"** as to any defendant, unless he shall have been once, at least, to the usual place of residence of the defendant, if such defendant have any in the county.

5552 (1080). It shall be the duty of every constable and sheriff to **apprehend** on view or warrant, and bring to justice all **felons** and **disturbers** and violaters of the criminal laws of this state, to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county.

5553 (1081). In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a **constable** shall extend throughout the whole county in which he may be appointed; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same **authority** and **powers** over goods and chattels and the persons of parties as is granted by law to a sheriff, under like process issued from courts of record.

Constables cannot demand fees in advance for summoning jurors. **27,** 400 (43 N. W., 177).

5554 (1082). When it shall become the duty of the officer to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the execution, **commitment**, or other process, whereby he holds such person in custody, and return the original to the justice who issued the same; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail until discharged by due course of law.

5555 (1083). Constables and sheriffs shall **pay over** to the party entitled thereto all **money received** by them in their official capacity, if demand be made by such party, his agent or attorney, at any time before he returns the writ upon which he has received it; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

5556 (1084). Constables and sheriffs shall be liable to twenty per cent **penalty** upon the amount of damages **for** which judgment may be entered against them, for failing to make return, making **false return**, or failing to pay over money by them collected or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided.

CHAPTER XIV.—GENERAL PROVISIONS.

5557 (1085). The provisions of this code, which are in their nature **applicable**, and in respect to which no special provision is made by statute, shall apply **to** proceedings before **justices** of the peace.

Justice may probably issue summons to other counties to bring in obligors on a note. 27, 581 (43 N. W., 347). Cited, 13, 221 (13 N. W., 175).

5558 (1086). Every **justice** must keep a book, denominated a **docket,** in which must be entered by him: *First*—The title of every action in which the writ is served, or where the parties voluntarily appear. *Second*—The date of the writ, the time of its return, and if an order to arrest the defendant or attach property was made, such fact must be stated, together with the affidavit upon which such order was made. *Third*—The filing of the bill of particulars of either party, and the nature thereof, and when not of too great length, the same shall be entered at length on the docket. *Fourth*—Which of the parties, if either of them, appear at the trial. *Fifth*—Every adjournment, stating on whose application, whether on oath or consent, and to what time. *Sixth*—When trial by jury is demanded, the demand must be stated, and by whom made, the names of the jurors selected, and the time appointed for the trial. *Seventh*—The names of the jurors who appear and of those sworn, the names of all witnesses sworn and at whose request. *Eighth*—The exceptions to the ruling of the justice, on questions of law, taken by either party. *Ninth*—The verdict of the jury, and when received; if the jury disagree and are discharged, that fact must be stated. *Tenth*—The judgment of the justice, specifying the items of costs included, and the time when rendered. *Eleventh*—The issuing of execution and orders to sell, when issued and to whom, the renewals thereof, if any, and when made, the return and when made, and a statement of any money paid to the justice, and by whom. *Twelfth*—The giving of a transcript to be filed in the clerk's office, and when given. *Thirteenth*—If appeal be taken, the undertaking and the time of entering into the same, and by which party taken. *Fourteenth*—The undertaking for stay of execution, and the time of giving the same. *Fifteenth*—The satisfaction of the judgment, and the time of satisfying the same.

Clerical mistakes and deficiencies in docket *held* not reversible error. **29**, 424 (45 N. W., 688). The docket or transcript is evidence of all facts required to be shown by it, but not of other facts. **16**, 226 (20 N. W., 252, 636 and 877).

5559 (1087). The several **particulars** in the last section specified must be

entered under the title of the action to which they relate, and at the **time** when they occurred, except that bills of exceptions in regard to the rulings on questions of law or evidence need not be entered until after the judgment, unless required by the justice or one of the parties; such **entries** in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be **evidence** to prove the facts stated therein.

5560 (1088). A justice must keep an **alphabetical index** to his docket, in which must be entered the names of parties to each judgment, with reference to the page of the entry; the names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family names; he shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case; he shall keep the entire **papers** in each action together and in packages of a proper and convenient size, and in the order in which the cases are numbered on his docket.

5561 (1089). It is the duty of every justice, upon the expiration of his term of office, to **deposit with** his **successor** his official docket, as well his own as those of his predecessor which may be in his custody, together with all files and papers, laws and statutes pertaining to his office, there to be kept as **public records** and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request.

5562 (1090). A justice receiving by succession or on deposit, any such docket, papers, and laws, shall, if requested, give a **receipt** therefor to the person from whom he receives the same.

5563 (1091). The justice with whom the docket of another may be deposited, either during vacancy or as a **successor,** is hereby **authorized,** while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had or instituted before him.

5564 (1092). In case of sickness or other **disability,** or necessary absence **of a justice,** at the time appointed for trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the powers, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice before whom the writ was returnable. If the case be adjourned, the justice before whom the summons was returnable must resume jurisdiction.

5565 (1093). The summons, execution, and every other **paper** made or issued by a justice must be filled up without a **blank** to be filled by another; otherwise it is **void.**

5566 (1094). A justice, at the request of a party, and on being satisfied that it is expedient, may specially **depute** any discreet **person** of suitable age, and not interested in the action, **to serve** a **summons** or execution with or without an order to arrest the defendants or to attach property. Such deputation must be in writing on the process.

A justice has no general power to appoint a constable. **15,** 522 (19 N. W., 504). A deputation in these words: "The State of Nebraska to Job Hathaway, of said county, specially deputized to serve these papers, Greeting," held, sufficient. **12,** 41 (10 N. W., 466).

5567 (1095). The **person** so **deputed** has the authority of a constable, in relation to the service, execution and return of such process, and is subject to the same obligation, but there can be **no fee** for his services taxed in the bill of costs.

5568 (1096). A **justice** may **punish** as for contempt, persons guilty of the **following acts,** and no others: *First*—Disorderly, contemptuous, or insolent behavior toward the justice, tending to interrupt the due course of the trial or other judicial proceedings before him. *Second*—A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding. *Third*—Willful resistance in the presence of the justice, to the execution of a lawful order or process made or issued by him.

See *ante*, sec. 5234.

5569 (1097). A warrant of arrest may be issued by such justice, on which the **person** so guilty may be **arrested** and brought before the justice, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon **discharge** him or may convict him for the offense and adjudge a **punishment** by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days.

5570 (1098). The **conviction,** specifying particularly the offense and the judgment thereon, must be **entered** in his docket; a **warrant** of commitment to the jail of the county, until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable or sheriff to whom it may be given, and by the jailer of the county.

5571 (1099). When a person intending to bring an action before a justice of the peace is a **non-resident** of the county in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give **security for costs** of suit, which may be done by depositing a sum of money, deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking, with security approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. If any plaintiff or plaintiffs, after commencing an action before a justice in the county in which he or they reside, afterwards remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued, and that probably will accrue, or require, in place thereof, that such party give sufficient security for all costs that have accrued, or which may accrue in the action, and in default to do either, shall enter a nonsuit against the plaintiff or plaintiffs.

5572 (1100). In all **actions** instituted before a justice of the peace, founded upon any bond, bill, promissory note, or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the **plaintiff,** his agent or attorney, to **file** said bond, bill, promissory note, or other written **evidence of indebtedness,** upon which said suit is brought, with such justice of the peace; and if, upon the trial, judgment shall be entered thereon in favor of the plaintiff, such bond, bill, promissory note, or other instrument in writing shall be retained by the justice so rendering judgment, who shall endorse thereon the sum for which he shall have entered judgment (provided the same shall in nowise exceed one hundred dollars), and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, bill, promissory note, or other instrument of writing, for the recovery of any other sum or sums, the payment of which is secured by the same bond, bill, promissory note, or other written evidence of indebtedness; *Provided,* That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, bill, promissory note, or other written evidence produced before him on trial, to the clerk of the district court to which such cause shall have been appealed, on or before the second day of the term of the court next after taking such appeal; *Provided, also,* That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace any joint and several obligation, for the purpose of prosecuting any party to said obligation, other than the party against whom judgment may have been rendered.

A justice has jurisdiction in actions on note or other instrument in writing up to $200. 18, 365 (25 N. W., 364). Cited, 13, 227 (13 N. W., 207).

Sec. 5573. "An act concerning the mode of proving written instruments before justices of the peace." 1873. In force February 18. G. S. p, 717.

5573. That in all civil actions before justices of the peace, in which the defendant has been served with summons in this state, it shall **not** be **necessary to prove** the execution of any bond, promissory note, bill of exchange, or other **written instrument,** or any endorsement thereon, upon which the action is brought, or set-off or counter-claim is based, unless the party sought to be charged as the maker, acceptor, or endorser, of such bond, promissory note, or bill of exchange, or other written instrument, shall make and file with the justice of the peace, before whom the suit is pending, an affidavit that such instrument was not made, given, subscribed, accepted, or endorsed by him.

Proof of execution need not be made unless denied as here provided. 18, 186 (24 N. W., 727). Cited, 14, 250 (15 N. W., 216).

5574 (1101). It shall **not** be **lawful for** any **justice** of the peace **to purchase** any **judgment** upon any docket in his possession; and for so doing, and for every such offense such justice shall forfeit and pay a sum not more than fifty dollars, nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed.

5575 (1102). The **provisions** of this title do **not apply to** proceedings in **actions** or suits **pending** when it takes effect. They shall be conducted to final judgment and determination in all respects as if it had not been adopted.

5576 (1103). Justices of the peace shall have **jurisdiction** in all cases where the sum in question does not exceed two hundred dollars, except in cases limited in this title.

Raised from one hundred dollars, 1881, p. 209. The words "sum in question" cannot mean the amount claimed by plaintiff. 11, 464 (9 N. W., 637); 15, 668 (19 N. W., 508).

CRIMINAL CODE.*

PART I.—CRIMES AND OFFENSES.

CHAPTER I.—ACCESSORIES IN FELONY.

5577 (1). If any person shall **aid, abet,** or procure any other person to commit any **felony,** every person so offending shall, upon conviction thereof, be imprisoned in the penitentiary for any time between the respective periods for which the principal offenders could be imprisoned for the principal offense; or, if such principal offender would, on conviction, be punishable with death, or be imprisoned for life, then such aider, abettor, or procurer shall be punished with death, or be imprisoned for life, the same as the principal offender would be.

5578 (2). An **accessory after the fact** is a person who, after full knowledge that a felony has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person found guilty of being an accessory after the fact shall be imprisoned in the jail of the county for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

Accessories after the fact will not warrant conviction under an indictment for murder. **8,** 88.

CHAPTER II.—HOMICIDE AND FŒTICIDE.

5579 (3). If any person shall purposely, and of deliberate and premeditated malice, or in the perpetration or attempt to perpetrate any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, kill another; or, if any person, by willful and corrupt perjury, or by subornation of the same, shall purposely procure the conviction and execution of any innocent person, every person so offending shall be deemed guilty of **murder in the first degree,** and, upon conviction thereof, shall suffer death.

Murder may be prosecuted by information instead of indictment. **29,** 440 (45 N. W., 451). Burden of proof in this crime does not shift; every essential element of charge must be established **24,** 624 (39 N. W., 790). Killing must have been done not only *purposely*, but also with *deliberation* and *premeditation.* **14,** 568 (17 N. W., 115). **22,** 559 (35 N. W., 384). Murder in first degree restricted to cases where deliberation was shown to have taken place before commission of crime. **6,** 136; **24,** 623 (39 N. W., 790). Malice; definition; presumption; self-defense; rules; degree of crime question for jury. **24,** 838 (40 N. W., 420). Malice defined. **23,** 756 (37 N. W., 630). See **6,** 145; **16,** 352 (20 N. W., 289).

5580 (4). If any person shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of **murder in the second degree;** and, on conviction thereof, shall be imprisoned in the penitentiary not less than ten years, or during life, in the discretion of the court.

See **15,** 214 (18 N. W., 129); **18,** 64 (24 N. W, 390); **26,** 387 (41 N. W., 951).

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* "An act to establish a criminal code." 1873. In force September 1. G. S., p. 719 This act is substantially an adoption of the criminal code of Ohio, and the construction given to it by the courts of that state is binding here. See **18,** 73 (24 N. W., 390). Later acts which do not expressly amend this code, but whose subject-matter is analogous to some of its provisions, are inserted in appropriate places and may be distinguished from the original by the absence of duplicate section numbering.

PREVIOUS CRIMINAL CODES.

1. Criminal code (being part fourth of the code of Iowa). 1855, p. 225.
2. "An act to establish a criminal code for the territory of Nebraska." 1858, p. 41.
3. The criminal code adopted as a part of the Revised Statutes of 1866 (p. 592). This appears to have been mainly a reenactment, with additions, of the criminal code of 1858 which it repeals (p. 683).

5581 (5). If any person shall unlawfully kill another without malice, either upon a sudden quarrel, or unintentionally, while the slayer is in the commission of some unlawful act, every such person shall be deemed guilty of **manslaughter**; and, upon conviction thereof, shall be imprisoned in the penitentiary not more than ten years nor less than one year.

5582 (6). Any **physician** or other person who shall administer, or advise to be administered, to any pregnant woman with a vitalized embryo or fœtus, at any stage of utero-gestation, any medicine, drug, or substance whatever, or who shall use or employ, or devise to be used or employed, any instrument or other means with intent thereby to **destroy** such **vitalized** embryo or **fœtus**, unless the same shall have been necessary to preserve the life of the mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case of the death of such vitalized embryo, or fœtus, or mother, in consequence thereof, be imprisoned in the penitentiary not less than one nor more than ten years.

CHAPTER III.—FIGHTING BY AGREEMENT.

5583 (7). If any person shall actually engage as a principal in any premeditated fight or contention, commonly called a **prize fight**, every person so offending shall be imprisoned in the penetentiary not less than one year nor more than ten years, and pay the costs of prosecution.

5584 (8). If any **person** shall engage, or be **concerned in**, or attend any such fight or contention as is described in the last preceding section, as backer, trainer, second, umpire, assistant, or reporter, every person so offending shall, on conviction, be fined in any sum not less than five dollars nor more than one hundred dollars, and imprisoned in the jail of the county not less than ten days nor more than three months, and pay the costs of prosecution.

Fine reduced from fifty and one hundred dollars. 1875, p. 21.

5585 (9). If any person shall engage in or fight a **duel** with another, or shall be second to such person who shall fight a duel, or if any person shall, by word, message, letter, or in any other way, challenge another to fight a duel, or shall accept a challenge to fight a duel, although no duel be fought, or shall, knowingly, be the bearer of such challenge, or shall advise, prompt, encourage, or persuade any person to fight a duel, or challenge another to fight a duel, whether such duel be fought or not, every person so offending shall be imprisoned in the penitentiary not more than ten years, nor less than one year, and shall forever after be incapable of holding any office of honor, profit, or trust within this state; *Provided, however*, If death ensue from such duel, the person or persons concerned shall be deemed guilty of murder, and shall be punished for murder in the first or second degree (as the case may be), as is provided in this act, anything in this section to the contrary notwithstanding.

5586 (10). [**Affray.**]—If any two persons shall agree and willfully fight or box at fisticuffs, the persons so offending shall be deemed guilty of an affray, and, upon conviction thereof, shall be fined, each, in a sum not exceeding fifty dollars, or be imprisoned in the county jail not exceeding ten days, or both, at the discretion of the court.

CHAPTER IV.—VIOLENCE TO PERSONS NOT RESULTING IN DEATH.

5587 (11). If any person shall have **carnal knowledge of** his **daughter** or **sister forcibly** and against her will, every such person so offending shall be deemed guilty of rape and shall be imprisoned in the penitentiary during life.

5588 (12). If any person shall have carnal knowledge of any **other** woman, or **female** child, than his daughter or sister, as aforesaid, forcibly and against her will; or if any male person, of the age of eighteen years or upwards, shall carnally know or abuse any female child under the age of fifteen years, with her consent, every such person so offending shall be deemed guilty of a **rape**, and shall be imprisoned in the penitentiary not more than twenty nor less than three years.

Age of male raised from seventeen and of female from ten, 1887, p. 660. Delay by prosecutrix in making complaint, a strong indication that charge is false. **27**, 692 (43 N. W., 425). Emission is presumed from the fact of actual penetration. **14**, 208 (15 N. W., 355). Prosecutrix competent witness; prosecutrix not required to elect on which count she will proceed. Indictment definition of rape. **6**, 282. Not necessary that there should be corroborating evidence to particular fact of the rape, facts and circumstances which tend to support testimony of prosecutrix. **22**, 333 (35 N. W., 195). Carnal knowledge with consent of female, though tardily given and after exercise of force, not rape. **27**, 93 (42 N. W., 903). Prosecutrix must resist, when and to what extent. **11**, 27 (9 N. W., 38). It is not necessary to prove that the female was a "child" but only that she was not fifteen. **25**, 40 (40 N. W., 596). See **28**, 821 (45 N. W., 53).

5589 (13). If any person shall forcibly, and by violence, or by putting in fear, take from the person of another any money or personal property, of any value whatever, with the intent to rob or steal, every person so offending shall be deemed guilty of **robbery**, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than fifteen nor less than three years.

5590 (14). If any person shall **assault** another with intent to commit a murder, rape, or robbery upon the person so assaulted, every person so offending shall be imprisoned in the penitentiary not more than fifteen nor less than two years.

5591 (15). If any person shall voluntarily, unlawfully, and on purpose cut or bite the nose, lip or lips, ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, cut or disable any limb or member of any person, with intent to murder, kill, **maim, or disfigure** such person, every person so offending shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

5592 (16). If any person shall maliciously **shoot, stab, cut,** or shoot at any other person, with intent to kill, wound, or maim such person, every person so offending shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

Prisoner charged with shooting with intent to wound or intent to kill prosecutor not required to elect on which count he will proceed. **8**, 486. "Maliciously" not necessary to a good indictment. **17**, 224 (22 N. W., 459).

5593 (17). If any person shall **unlawfully assault or threaten** another in a menacing manner, or shall unlawfully strike or wound another, the person so offending shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, or imprisoned in the jail of the county not exceeding three months, or both, in the discretion of the court, and shall, moreover, be liable to the suit of the party injured.

Punishment reduced from $150 and three months, 1875, p. 2. One who is present and "aids," and "abets" is a principal. **11**, 258 (9 N. W., 57).

Sec. 5594. "An act to punish the giving provocation for assault." 1887, p. 657. In force July 1.

5594. That any person who shall intentionally provoke or attempt to **provoke an assault** upon himself or another by the uttering of grossly vile and insulting epithets applied to the assaulting party, or one so tempted to commit an assault, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding ten dollars ($10), or be imprisoned in the county jail not exceeding ten days.

Secs. 5595 and 5596. "An act to provide for the punishment of persons guilty of an assault upon another with intent to inflict great bodily injury, and for the punishment of persons guilty of an assault upon another person with intent to kill the person assaulted." 1889, p. 385. In force June 30.

5595. That if any person **assault** another with intent **to inflict** a great **bodily injury,** he shall be punished, on conviction thereof, by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years.

5596. If any person shall **assault** another with the intent **to kill** the person so assaulted, every person so offending shall be imprisoned in the penitentiary not less than one (1) nor more than ten (10) years.

See **5,** 418. *Held*, void. *Shicklett v. State*, **31,** —— (48 N. W., 820).

5597 (18). Any person or persons who shall **kidnap** or forcibly or fraudulently carry off or **decoy out of** this **state** any person or persons, or shall arrest or imprison any person or persons, with the intention of having such person or persons carried out of the state, unless it be in pursuance of the laws thereof, shall be confined in the penitentiary not less than three nor more than seven years, and shall, moreover, be liable for the costs of prosecution.

5598 (19). **False imprisonment** is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

5599 (20). Every person who shall maliciously or forcibly or fraudulently lead, take or **carry away,** or decoy, or entice away, any **child** under the age of ten years, with intent unlawfully to detain or conceal such child from its parent or parents, or guardian, or other person having the lawful charge of such child, shall be imprisoned in the penitentiary not more than seven years nor less than one year.

5600 (21). Every person who shall **harbor** or **conceal** with intent to detain from its parent or parents, or guardian, any **child** under the age of ten years, so led, taken, **carried,** decoyed, or enticed **away,** as in the preceding section specified, shall, upon conviction thereof, be imprisoned in the penitentiary not more than seven years nor less than one year.

CHAPTER V.—Offenses Against Public Peace and Justice.

5601 (22). Any person or persons residing in this state, who shall levy war against this state, or the United States of America, or shall knowingly adhere to the enemies of this state, or the United States, giving them aid and comfort, shall be deemed guilty of **treason** against the state of Nebraska, and shall be imprisoned in the penitentiary during life.

5602 (23). Any person or **persons** residing within this state, who shall surrender or betray, or be in any way **concerned in** the surrendering or **betraying** any military post, fortification, arsenal, or military stores of this state, or the United States, into the possession or power of any enemies of either, or shall supply arms or ammunition or military stores to such enemies, or who shall unlawfully and without authority usurp possession and control of any such military post, fortification, arsenal, or military stores, or, having knowledge of any treason against this state or the United States, shall willfully omit or refuse to give information thereof to the governor, or some judge of this state, or to the president of the United States, shall be imprisoned in the penitentiary not less than ten years nor more than twenty years.

5603 (24). If any person shall, within this state, begin or set on foot, or provide or prepare the means for any unauthorized **military expedition** or enterprise, to be carried on from thence **against** the territory or **people of** any of the

United **States**, every person so offending shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

5604 (25). Whoever shall **carry** a weapon or **weapons concealed** on or about his person, such as a pistol, bowie-knife, dirk, or any other dangerous weapon, on conviction of the first offense shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days, and for the second offense not exceeding one hundred dollars or imprisoned in the county jail not more than three months, or both, at the discretion of the court; *Provided, however*, If it shall be proved from the testimony on the trial of any such case that the accused was, at the time of carrying any weapon or weapons as aforesaid, engaged in the pursuit of any lawful business, calling, or employment, and the circumstances in which he was placed at the time aforesaid were such as to justify a prudent man in carrying the weapon or weapons aforesaid, for the defense of his person, property, or family, the accused shall be acquitted.

Fine reduced from $100 and $500, 1875, p. 3.

5605 (26). If three or more persons shall **assemble** together **with intent to do** any **unlawful act**, with force and violence, against the person or property of another, or to do any unlawful act against the peace; or, being lawfully assembled, shall agree with each other to do any unlawful act as aforesaid, and shall make any movement or preparation therefor, the persons so offending shall be fined in any sum not exceeding one hundred dollars, and be imprisoned in the jail of the county not exceeding three months.

Fine reduced from $100, 1875, p. 3. Owner of building may be guilty for unlawfully entering same. 15, 560 (20 N. W., 33). See 16, 30 (19 N. W., 612).

5606 (27). Whenever three or more **persons** shall be **assembled** as aforesaid, and proceed to commit any of the offenses aforesaid, it shall be the duty of all judges, justices of the peace, and sheriffs, and all ministerial officers, immediately, upon actual view, or as soon as may be, on information, to make **proclamation** in the hearing of such offenders, commanding them in the name of the state of Nebraska to disperse and depart to their several homes or lawful employments; and if, upon such proclamation, such persons shall not disperse and depart as aforesaid, it shall be the duty of such judges, justices of the peace, and sheriffs, and all other ministerial officers, respectively, to call upon all persons near, and, if necessary, throughout the county, to aid and assist in **dispersing** and taking into custody all persons assembled as aforesaid; and military officers and others, called on as aforesaid, and refusing to render immediate assistance, shall each be fined in any sum not exceeding twenty-five dollars.

5607 (28). If any person shall forcibly **obstruct** any of the **authorities** aforesaid, or if any three or more persons shall continue together after proclamation made as aforesaid, or attempted to be made, and prevented by such rioters; or, in case of the proclamation, any three or more persons, being assembled as aforesaid, shall commit any unlawful act as aforesaid, every such offender shall be fined in any sum not exceeding one hundred dollars, and imprisoned in the jail of the county not exceeding three months; and shall, moreover, find security for good behavior and to keep the peace for a time not exceeding one year.

Punishment changed from $500 and thirty days, 1875, p. 3.

5608 (29). If any of the **persons** so unlawfully assembled shall be killed, maimed, or otherwise **injured, in** consequence of **resisting** the judges or others in dispersing and apprehending them, or in attempting to disperse and apprehend them, said judges, justices of the peace, sheriffs, and other ministerial **officers**, and others acting by their authority, or the authority of either of them, shall be **holden**

guiltless; *Provided,* Such killing, maiming, or injury shall take place in consequence of the use of necessary and proper means to disperse or apprehend any such persons so unlawfully assembled.

5609 (30). If any person shall **abuse** any **judge** or justice of the peace, **resist** or abuse any sheriff, constable, or other **officer,** in the execution of his office, the person so offending shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the jail of the county not exceeding three months, or both, at the discretion of the court.

Punishment changed from $200 and thirty days, 1875, p. 4.

5610 (31). If any person shall **rescue,** by force, any **offender,** charged with, or convicted of, any offense, by the laws of this state made punishable with imprisonment, from any jail or other place of confinment, or from the custody of any officer, or other person charged with the safe keeping of such offender, every person so offending shall be fined in any sum not exceeding five hundred dollars, and be imprisoned in the jail of the county not exceeding thirty days.

5611 (32). If any person or persons shall at any time interrupt or **molest** any **religious** society or any member thereof; or any persons when **meeting** or met together for the purpose of worship, or performing any duties enjoined on, or appertaining to them, as members of such society, the person or persons so offending shall be fined in any sum not exceeding twenty dollars; *Provided,* That this section shall not be so construed as to deprive any religious society of the right of laying hands upon the person or persons who may be disturbing the congregation, and turning him or them out of the church or place of worship.

An information "willfully, maliciously, unlawfully interrupt, molest, and disturb a religious society, to-wit, the Welsh Presbyterian church," is good. **28**, 495 (44 N. W., 658).

5612 (33). If any person or persons shall be found making or **exciting** any contention or **disturbance at** any **tavern, court,** election, **or** other **meetings of** the **citizens** for the purpose of transacting or doing any business appertaining to, or enjoined on them, the person or persons so offending shall be fined in any sum not exceeding five dollars, nor less than fifty cents, each, and, if necessary, imprisoned until such meeting shall be ready to disperse.

5613 (34). If any person or persons shall hereafter willfully **disturb,** molest, or interrupt any literary **society, school,** or society formed for the intellectual improvement of its members, or any other school or society organized under any law of this state, or any school, society, **or meeting** formed or convened for improvement in music, letters, or for social amusement, such person or persons so offending shall be fined in any sum not less than five nor more than twenty dollars.

Person charged with disturbing a school meeting may prove that he was member of school board and was present in the discharge of his duties. **6**, 172.

5614 (35). If any **county surveyor,** or deputy surveyor, shall be **molested** or prevented from doing or performing any of his official duties, by means of the threats or improper interference of any person or persons, such surveyor shall call on the sheriff of the county, who shall accompany him, and remove all force; and the person or persons thus threatening, or improperly interfering with any surveyor, while performing his official duties, shall be fined in a sum not exceeding one hundred dollars; and, moreover, be liable for all damages by any person sustained by the hindrance of the surveyor, and also for all expenses and costs that may accrue in consequence of the attendance of the sheriff.

5615 (36). **[Neglect by conservators of the peace.]**—If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding one hundred dollars.

5616 (37). If any person or persons shall, corruptly or by threats, or force, **endeavor to influence,** intimidate, or impede, any **juror, witness,** or **officer,** in any court of this state, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to **obstruct** or impede, the due **administration of justice** therein, every person or persons so offending shall be punished by fine, not exceeding one hundred dollars, or by imprisonment, not exceeding twenty days, or both.

Endeavor of prosecuting attorney to dissuade witnesses from testifying, criticised. 24, 723 (40 N. W., 302).

CHAPTER VI.—Attempts and Inducements to Poisoning and Abortion.

5617 (38). If any person or persons shall **administer poison** to another with the intent to destroy or take the life of the person or persons to whom the same shall be **administered,** or do him, her, or them an injury, or if any person or persons shall mix poison in water, food, drink, or medicine with the aforesaid intent, the person or persons so offending, their aiders and abettors, shall be imprisoned in the penitentiary not more than fifteen nor less than two years.

5618 (39). Any physician or other person who shall willfully administer to any pregnant woman any medicine, drug, substance, or thing whatever, or shall use any instrument or other means whatever, with **intent** thereby to **procure** the **miscarriage** of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

5619 (40). If any **physician,** or other person, while in a state of **intoxication,** shall **prescribe** any poison, **drug,** or medicine, to another person, which shall endanger the life of such other person, he shall be punished by a fine of not more than one hundred dollars.

5620 (41). If any physician, or other person, shall **prescribe** any drug or medicine to another person, the true nature and composition of which he does not, if inquired of, truly make known, but avow the same a **secret medicine** or composition, thereby endangering the life of such other person, he shall be fined in any sum not exceeding one hundred dollars.

5621 (42). Every **apothecary,** druggist, or other person who shall sell or give away, except upon the prescription of a physician, any article or articles of medicine belonging to the class usually known as **poisons,** shall be required: *First*—To register in a book kept for that purpose the name, age, sex, and color of the person obtaining such poison. *Second*—The quantity sold. *Third*—The purpose for which it was required. *Fourth*—The day and date on which it was obtained. *Fifth*—The name and place of abode of the person for whom the article is intended. *Sixth*—To carefully mark the word "poison" upon the label or wrapper of each package. *Seventh*—To neither sell or give away any article of poison to minors of either sex.

5622 (43). No apothecary, druggist, or other person shall be permitted to sell or give away any quanity of **arsenic** less than one pound without first **mixing** either **soot or indigo** therewith in the proportion of one ounce of soot or half an ounce of indigo to the pound of arsenic.

5623 (44). Any person offending against the provisions of either of the last two preceding sections shall be fined in any sum not less than twenty nor more than one hundred dollars.

Maximum reduced from $200, 1875, p. 4.

5624 (45). If the publishers of any newspaper in the state shall print or publish any advertisement of any secret drug or nostrum, purporting to be exclusively for the use of females, or if any druggist or other person shall sell or keep for sale, or shall give away any such secret drug or nostrum, purporting to be exclusively for the use of females; or if any person shall, by printing or writing, or in any other way, publish an account or description of any drug, medicine, instrument, or apparatus for the purpose of preventing conception, procuring abortion, or miscarriage, or shall, by writing or printing in any circular, newspaper, pamphlet, or book, or in any other way publish or circulate any obscene notice, or shall within the state of Nebraska keep for sale or gratuitous distribution any newspaper, circular, pamphlet, or book containing such notice of such drugs, instruments, or apparatus, or shall keep for sale or gratuitous distribution any secret nostrum, drug, or medicine for the purpose of preventing conception, procuring abortion, or miscarriage, such person or persons so violating any of the provisions of this section shall be fined in any sum not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court; *Provided*, That nothing in this section shall be so construed as to affect teaching in regular chartered medical colleges or the publication of standard medical books.

CHAPTER VII.—LIBEL AND THREATENING LETTERS.

5625 (46). If any person shall knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, containing willful and malicious threats of injury of any kind whatever, or with intent or for the purpose of extorting money, or other valuable things, from any person, every person so offending shall be fined in any sum not less than fifty nor more than five hundred dollars, or be imprisoned in the jail of the county not exceeding ten days, or both, at the discretion of the court.

5626 (47). If any person shall write, print, or publish any false and malicious libel of or concerning another, or shall cause or procure any such libel to be written or published, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars ($500), or be imprisoned in the county jail not exceeding six (6) months, or both, at the discretion of the court, and moreover, be liable to the party injured; *Provided*, That if said libel is published in a newspaper having a general circulation, the person so offending shall be punished by imprisonment in the penitentiary not less than one (1) nor more than three (3) years.

Proviso added 1887, p. 659. Unless words are actionable *per se*, party must state in his petition wherein he has sustained damages. **6**, 259.

CHAPTER VIII.—BREAKING AND ENTERING BUILDINGS.

5627 (48). If any person shall, in the night season, willfully, maliciously, and forcibly break and enter into any dwelling house, kitchen, smoke house, shop, office, store house, mill, pottery, factory, water craft, school house, church or meeting house, barn or stable, warehouse, malt house, still house, railroad car factory, station house, or railroad car, with intent to kill, rob, commit a rape, or with intent to steal property of any value, or commit any felony, every person so offending shall be deemed guilty of burglary, and shall be imprisoned in the penitentiary not more than ten nor less than one year.

The name of owner must be set out in indictment; for this purpose the visible occupant is the owner. **26**, 310 (41 N. W., 1116). Complaint before magistrate charging burglary with intent to steal, and information in district court charging burglary with intent to commit rape, describe same offense. **24,** 101 (38 N. W., 36). A forcible breaking necessary. **25,** 782 (41 N. W., 780). Sentence of ten years reduced for youth who had been led into the crime. **27,** 884 (44 N. W., 39).

5628 (49). If any person shall willfully and maliciously, either in the **day time or night** season, **enter** any dwelling house, kitchen, shop, store, warehouse, malt house, still house, mill, factory, pottery, water craft, school house, church or meeting house, smoke house, barn or stable, **and** shall **attempt to kill,** disfigure, or maim any person, rob, stab, commit a rape or arson, every person so offending shall be imprisoned in the penitentiary not more than ten years nor less than one year.

5629 (50). If any person shall be **found having** upon him or her any pick-lock, crow, key, bit, or other **instrument** or tool, **with intent feloniously to** break and **enter** into any dwelling house, store, warehouse, shop, or other building, containing valuable property, he or she shall be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

5630 (51). If any person shall in the night season unlawfully break open and **enter** any mansion house, shop, store, ship, boat, or other water craft, in which any person shall reside or dwell, **and** shall **commit, or attempt** to commit, any personal **violence** or abuse, or shall be so armed with any dangerous weapon as to indicate a violent intention, the person so offending shall be fined in any sum not exceeding three hundred dollars, and be imprisoned in the cell or dungeon of the jail of the county not exceeding thirty days, at the discretion of the court.

5631 (52). If any person shall, **in** the **day time, unlawfully** break open and **enter** any mansion house, shop, store, ship, boat, or other water craft, in which any person shall or may dwell or reside, and shall commit or attempt to commit any personal abuse, force, or violence, he or she so offending shall be fined in any sum not exceeding one hundred dollars, and be imprisoned in the jail of the county not exceeding twenty days, at the discretion of the court.

5632 (53). If any person shall willfully and maliciously, **in** the **day time,** break and **enter** any dwelling house, kitchen, shop, store, warehouse, malt house, still house, mill, factory, pottery, water craft, school house, church or meeting house, smoke house, barn, stable, railroad depot, car factory, station house, or railroad car, **with intent to steal,** every person so offending shall be fined in any sum not exceeding three hundred dollars, and be imprisoned in the county jail not exceeding sixty days, at the discretion of the court.

CHAPTER IX.—Burning Buildings and Other Property.

5633 (54). If any person shall willfully and maliciously burn, or cause to be burned, any dwelling house, kitchen, smoke house, shop, barn, stable, store house, warehouse, malt house, still house, mill, or pottery, the property of any other person; or any buildings, the property of any other person, of the value of fifty dollars, or containing property of the value of fifty dollars; or any church, meeting house, court house, workhouse, school house, jail, or other public building; or any ship, boat, or other water craft, of the value of fifty dollars; or any bridge of the value of fifty dollars, erected across any of the waters within this state; every person so offending shall be deemed guilty of **arson,** and shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

5634 (55). If any person shall willfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with **intent to burn** or destroy the same, every person so offending shall be imprisoned in the penitentiary, and kept at hard labor, not more than seven years nor less than one year.

5635 (56). Every person who shall willfully and maliciously **burn** or **cause to be burned** any dwelling house, kitchen, smoke house, shop, office, barn, stable, store house, warehouse, still house, mill, pottery, or any other building of the value of fifty dollars; or, any ship, boat, or other water craft, of the value of fifty dollars; or any goods, wares, merchandise, or other chattels, of the value of fifty dollars, which shall be at the same time the **property** of such person, and **insured** against loss or damage by fire, with intent to prejudice such insurer, every person so offending shall be deemed guilty of arson, and shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

5636 (57). If any person shall willfully and maliciously **set fire to** any of the buildings, water craft, or other property described in the foregoing section, and which shall be at the same time the **property** of such person, and **insured** against loss or damage by fire, with intent to burn or destroy the same, and with intent to prejudice such insurer, every person so offending shall be imprisoned in the penitentiary not more than seven years nor less than one year.

5637 (58). If any person shall willfully, maliciously, and unlawfully **attempt to burn**, or cause to be burned, any dwelling house, kitchen, smoke house, shop, barn, stable, store house, warehouse, malt house, still house, mill, or pottery, the property of any other person, of the value of fifty dollars; or, any church, meeting-house, court house, workhouse, school house, jail, or other public building, or any ship, boat, or other water-craft, of the value of fifty dollars, or any bridge of the value of fifty dollars, erected across any of the waters within this state; or, if any person shall willfully, maliciously, or unlawfully attempt to set fire to any of the buildings or other property described herein, with intent to burn or destroy the same, by igniting or trying to set fire to or ignite the same, or any material or thing therein, or any combustible material or thing without the same and nearly adjoining thereto, though the same, or part thereof, be not fired or burned; every person so offending shall be fined in any sum not exceeding three hundred dollars, or imprisonment in the county jail for a term not exceeding four months, or both, at the discretion of the court.

5638 (59). Any person who shall willfully, maliciously, and unlawfully **attempt to ignite**, set fire to, or burn the Nebraska **penitentiary**, or any shop, storehouse, or building within the enclosed walls of the said penitentiary, by the means and in the manner described in the next preceding section, shall be imprisoned in the penitentiary not more than three years nor less than one year.

5639 (60). If any person shall willfully or maliciously **set fire to**, or burn, or cause to be burned, any barrack or stack of **hay**, wheat, rye, oats, barley, flax, hemp, or fodder, or **grain** of any kind; or any corn-crib, or place wherein corn may be deposited; or, any fence, boards, plank, scantling, rails, tan-bark, or timber, the property of another, and of the value of thirty-five dollars or upwards; every person so offending shall be imprisoned in the penitentiary not more than three years nor less than one year.

5640 (61). If any person shall willfully or maliciously commit any of the offenses enumerated in the next preceding section, but the injury or damage therefrom shall be of a **less value than thirty-five dollars**, every person so offending shall be fined in any sum not exceeding one hundred dollars, nor less than five dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

5641 (62). If any person or persons shall willfully and intentionally, or negligently and carelessly **set on fire**, or cause to be set on fire, any **woods, prairies**, or other grounds whatsoever, in any part of this state, it shall be deemed a misdemeanor, and every person so offending shall be punished by a fine of not less than five (5) dollars nor more than one hundred (100) dollars, and by imprisonment in the county jail for not less than one month nor more than six months; *Provided*, That this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation, field, or enclosure, for the necessary preservation thereof from accident by fire between the first day of March and the last day of November, by giving to his or her neighbors two days' notice of such intention; *Provided also*, That this section shall not be construed to take away any civil remedy which any person may be entitled to, for any injury which may be done or received in consequence thereof.

Amended 1877, p. 3.

CHAPTER X.—OFFENSES RELATING TO DOMESTIC ANIMALS.

5642 (63). If any person shall willfully and maliciously **alter** or deface any artificial ear **mark or brand**, upon any horse, mare, foal, filly, mule or ass, sheep, goat, or swine, cow, ox, steer, bull or heifer, the property of another, every person so offending shall be fined in any sum not exceeding fifty dollars, and be liable in treble damages to the party injured.

5643 (64). If any person or persons shall willfully or maliciously **kill or** destroy any horse, mare, foal, filly, mule, ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another or others, of the value of thirty-five dollars or upwards, or shall willfully and maliciously **injure** any such animal or **animals**, the property **of** another or others, **to the amount of thirty-five dollars** or upwards, the person or persons so offending shall be imprisoned in the penitentiary not more than three years nor less than one year.

5644 (65). If any person or persons shall unlawfully and maliciously **kill or** destroy any horse, mare, foal, filly, mule or ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another or others, of less value than thirty-five dollars, or shall willfully and maliciously **injure** any such animal or **animals**, the property of another or others, **to an amount less than thirty-five** dollars, such person or persons shall be fined in any sum not more than one hundred dollars, nor less than five dollars, or imprisonment in the jail of the county not exceeding three months, or both fined and imprisoned as aforesaid, at the discretion of the court.

Fine reduced from $200, 1875, p. 4.

5645 (66). If any person or persons shall willfully and maliciously administer, or cause to be administered, **poison** of any sort whatever, to any horse, mare, foal, filly, jack, mule, ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the property of another, with intent to injure or destroy such horse, mare, foal, filly, jack, mule or ass, sheep, goat, cow, ox, steer, bull, heifer, or swine, the person or persons so offending shall be fined in the sum of one hundred dollars, or imprisoned in the jail of the proper county, not exceeding thirty days, at the discretion of the court.

Sec. 67 repealed 1887, p. 660.

Secs. 5646 to 5649. "An act to prevent cruelty to animals," etc. 1887, p. 660. In force July 1.

5646. Any person or persons who shall willfully or inhumanly beat, strike, kick, wound, kill, or mutilate any horse, mule, cow, ox, sheep, or swine, or any other animal enumerated as among domesticated **animals**, or any person or persons, whether the offender be owner, agent, or servant, who allows his team, whether horses, mules, or oxen, to stand tied upon the street for four hours at a time in cold or stormy weather, to the **injury** of said team, shall upon conviction thereof be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

5647. Any person or persons who shall overdrive, **torture**, torment, overload, or **overwork** any horse or horses, mule or mules, or oxen shall, upon the conviction of any of the offenses enumerated herein, be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

5648. Any person or persons, whether as owner or agent, having in charge horses, mules, cattle, sheep, or swine, or any other domesticated animal or animals commonly called live stock, who shall willfully or carelessly **neglect** to provide sufficient **sustenance or shelter** therefor, at any season of the year, shall upon the conviction be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

5649. It is hereby made the duty of sheriffs, constables, marshals of cities or villages, or police officers to immediately **arrest** any person or **persons violating** any of the provisions of the foregoing sections of this act, **without** warrant or **process**, and call upon bystanders or others for assistance when the same may be necessary to enable them to make such arrest. Any person who shall violate any of the provisions of this act shall for each offense be fined in any sum not less than five dollars ($5) nor more than fifty dollars ($50).

5650 (68). Any person who shall impound or cause to be **impounded**, in any pound or yard, for sale or slaughter, or for any other purpose, any domestic **animal**, shall supply the same during such confinement with a sufficient quantity of good and wholesome **food and water**, and in default thereof shall, upon conviction, be adjudged guilty of a misdemeanor, and in case any domestic animal shall be at any time impounded or yarded, as aforesaid, and shall continue to be without necessary food and water for more than twenty-four successive hours, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound or yard in which any such domestic animal shall be so confined, and to supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected by him of the owner of such domestic animal, and the said domestic animal shall not be exempt from levy and sale upon the execution issued upon a judgment therefor.

5651 (69). If any person shall carry or cause to be carried, in or upon any vehicle or otherwise, any domestic animal in a **cruel** or inhuman manner, he shall be deemed guilty of a misdemeanor, and whenever he shall be taken into custody therefor by any officer such officer may take charge of such vehicle and its contents, and deposit the same in some safe place of custody; and any necessary expenses which may be incurred for taking charge of and keeping and sustaining the same, shall be a lien thereon, to be paid before the same can be lawfully recovered, and if the said expenses, or any part thereof, remain unpaid, they may be recovered by the person incurring the same of the owner of said domestic animal in any action therefor; and it shall be unlawful for any person or corporation engaged in **transporting** live stock on railway trains to detain such stock in cars for a longer continuous period than twenty-four hours without supplying the same with food and water.

5652 (70). If any maimed, sick, infirm, or **disabled** domestic **animal** shall be **abandoned** to die by any person in any public place, such person shall be deemed guilty of a **misdemeanor**, and it shall be lawful for any magistrate or chief of police in this state to appoint suitable persons to destroy such domestic animal, if unfit for further use.

5653 (71). Any person convicted of a violation of any of the provisions of the last four preceding sections shall pay for every offense a **fine** not less than five nor more than fifty dollars.

5654 (72). Any person or persons who shall confine, or aid or assist in confining, any bull, steer, or other domestic or domesticated animal or animals, either by tying, penning, or enclosing the same, for the purpose of bull-baiting, bear-baiting, or other purpose of torture, or shall aid or assist in torturing the same when so tied or penned, either by dogs, whips, spears, or other instruments, shall pay a fine not exceeding one hundred dollars.

5655 (73). If any person or persons shall publicly exhibit, or aid and assist in exhibiting the game commonly called cock-fighting, such person or persons shall forfeit and pay a fine not exceeding twenty dollars.

5656 (74). If any two or more persons shall run a match, horse race or races in any public road in common use, for the purpose of trying the speed of their horses, every person so offending shall be fined in any sum not exceeding five dollarsnor less than one dollar.

5657 (75). Any person, being the owner of sheep or having the same in charge, who shall turn out, or suffer any sheep having any contagious disease, knowing the same to be so diseased, to run at large upon any common, highway, or enclosed ground, or who shall sell any such sheep, knowing the same to be diseased, without fully disclosing the fact to the purchaser, shall be punished by a fine of not less than twenty dollars and not more than one hundred dollars, and be imprisoned in the jail of the county not exceeding three months; *Provided*, This section shall not be so construed as to prevent any person owning such diseased sheep from driving along any public highway.

Amended 1875, p. 5.

5658 (76). It shall be unlawful for any person to sell, barter, or dispose of, or to permit to run at large, any horses, cattle, sheep, or domestic animal, knowing that such horse, cattle, sheep, or domestic animals are infected with contagious or infectious disease, or have been recently exposed thereto, unless he shall first duly inform the person to whom he may sell, barter, or dispose of such horse, cattle, sheep, or other domestic animal, of the same; and any person so offending shall be fined in any sum not less than twenty dollars nor more than one hundred dollars, or be confined in the jail of the county not exceeding three months.

Fine reduced from $200, 1875, p. 5. It is a good defense to an action on a promissory note that the sole consideration was a glandered horse. 29, 304 (45 N. W., 462).

5659 (77). If any person, being the owner or having charge of any horses, cattle, sheep, or any kind of stock, knowing the same to be infected with contagious or infectious disease, shall knowingly permit it to come in contact with any other person's horses or stock, without such person's knowledge or permission, such person shall be fined in any sum not less than fifty nor more than five hundred dollars, or be confined in the jail of the county not less than ten nor more than fifty days.

5660 (78). If any person shall wrongfully take any horse, mare, gelding, foal or filly, ass or mule, from the stable, lot, or pasture of another, or from a hitching rack, or any other place as aforesaid, have having been lawfully placed, without consent of the owner, with intent to injure, set at large, or wrongfully use the animal so taken, such person shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months, or both, and shall also be liable to the party injured in double the amount of damages sustained.

Fine reduced from $200, 1875, p. 5.

Sec. 79 repealed. Laws 1879, p. 70.

5661 (80). It is hereby declared unlawful for any person or persons to interfere with, or set at liberty any domestic animal or animals impounded in a lawful manner by any other person; and every person so offending shall, upon conviction thereof, pay a fine not exceeding one hundred dollars, nor less than five dollars.

5662 (81). If any person shall steal any hive, box, bee palace, or other contrivance containing honey or honey bees, the property of another, of less value than thirty-five dollars; or if any person shall steal honey from any such hive, box, bee palace, or other contrivance as aforesaid; or if any person shall willfully and maliciously disturb, injure, or destroy any such hive, box, bee palace, or other contrivance containing honey or honey bees; or if any person shall steal, or by any art, device, or contrivance, or in any manner whatever decoy from any such hive, box, bee palace, or contrivance any such honey bees, with intent to convert the same to his own use, or with intent to damage or defraud the owner thereof; or if any person shall by any art, contrivance, or device unlawfully and maliciously injure, damage, or destroy any such honey bees, by means of poison and otherwise, every person so offending shall be fined in any sum not exceeding one hundred dollars, and shall be confined in the jail of the county not less than ten nor more than thirty days, and shall moreover be liable to the party injured in double the value of the property stolen, injured, or destroyed.

5663 (82). Any person or persons who unlawfully enters the premises of another, for the purpose of disturbing or carrying away any box, gum, or vessel containing bees or honey, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the jail of the county not exceeding sixty days, or both, and shall make restitution to the party injured in double the amount of damages sustained.

CHAPTER XI.—Offenses Relating to Game and Fish.

5664 (83). It shall be unlawful for any person in the state of Nebraska to knowingly and intentionally kill, injure, or harm, except on the lands owned by such person, any robin, lark, thrush, blue bird, king bird, sparrow, wren, jay, swallow, turtle dove, oriole, wood pecker, yellow hammer, cuckoo, yellow bird, bobolink, or other bird or birds of like nature that promote agriculture and horticulture by feeding on noxious worms and insects, or that are attractive in appearance or cheerful in song. Any person violating any of the provisions of this section shall be fined not less than three nor more than ten dollars for each bird killed, injured, or harmed.

5665 (84). It shall be unlawful for any person, between the fifteenth day of April and the fifteenth day of February following, to trap, catch, kill, or to pursue with such intent, on the premises of another, any muskrat, mink, or otter; and it shall be unlawful for any person, at any time, to enter upon the premises of another, without his consent, with a view of trapping, hunting, killing, or pursuing with intent to kill, any such animal or animals; and it shall furthermore be unlawful for any person to enter upon the premises of another, without his consent, and destroy, tear down, or in any manner injure the muskrat heaps or houses on such premises; any person offending against any of the provisions of this section shall be fined in any sum not exceeding twenty dollars for each offense; *Provided*, This section shall not be so construed as to prevent the catching and killing of any animals specified, where there is danger of their doing injury to property, either public or private.

5666 (85). It shall also be unlawful for any person, at any time, by the aid or use of any swivel, punt gun, big gun (so called), or any other than the common shoulder gun; or by the aid or use of any punt boat, or sneak boat used for carrying such gun, to catch, kill, wound, or destroy, or to pursue after with intent to catch, kill, wound, or destroy, upon any of the waters, bays, rivers, marshes, mud flats, or any cover to which wild fowl resort within the state of Nebraska, any wild goose, wood duck, teal, canvas-back, bluebill, or other wild duck, or to destroy or disturb the eggs of any of the birds above named; and any person offending against any of the provisions of this act shall be fined in any sum not less than two dollars nor more than twenty dollars for each offense, or be imprisoned in the county jail not more than twenty days, or both.

5667 (86). It shall be unlawful for any person to kill, ensnare, or trap any wild buffalo, elk, mountain sheep, deer or antelope (except for the purpose of domestication), between the first day of January and the first day of October in each year, or to kill, ensnare, or trap any grouse between the first day of January and the first day of September in each year, or to kill, ensnare, trap, or net quail or wild turkey, between the first day of January and the first day of October in each year, or to ensnare, trap, or net the same at any time of the year, or to buy, sell, ship, transport, or carry, or have in possession any such animals or birds, between the dates within which the killing, ensnaring, trapping, or netting of such animals or birds is prohibited by law. It shall also be unlawful for any person, agent, or employee of any association, corporation, railroad company, or express company, to receive, carry, transport, or ship any such animal or bird at any time of the year. It shall be unlawful for any person to go upon the premises of another person or corporation for the purpose of hunting, trapping, netting, ensnaring, or killing any animal or bird at any season of the year, unless by the consent of the owner or owners of said premises. It is further enacted that any person, agent, or employee, as aforesaid, who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall pay a fine of fifteen dollars for each buffalo, elk, mountain sheep, deer, antelope, or wild turkey so as aforesaid killed, ensnared, trapped, netted, bought or sold, shipped, transported, or held in possession in violation of this section, and the sum of five dollars for each grouse or quail so as aforesaid killed, trapped, ensnared, netted, bought, sold, shipped, transported, or held in possession in violation of the provisions of this section. Having in possession any of the named animals or birds between said dates shall be deemed and taken as presumptive evidence that the same were killed, ensnared, netted, or trapped in violation of this section, and the civil authorities of any city, town, or precinct where any animal or bird shall have been killed, or held in possession in violation of law be found, are hereby authorized to cause the same to be seized with or without warrant, and to be distributed among the poor persons of such city, town or precinct; and any person who shall go upon the land of another, in violation of this section, shall, upon conviction thereof, pay for such offense in any sum not less than five dollars, nor more than fifty dollars, and shall be liable to the owner of the premises in an action for trespass.

Amended 1875, p. 18; 1885, p. 388.

5668 (87). **[Interfering with private fish pond.]**—That it shall be unlawful for any person to catch, interfere with, injure, or in any manner destroy, or maliciously disturb, to the damage of the private property of another, the fish in, or work connected with, any private fish pond, not exceeding ten acres, in this state. Any person or persons violating the provisions of this section shall be fined in any sum not less than ten dollars nor more than one hundred dollars; and it shall be lawful for any person to take up, remove, or clear away any fish net, fish lines, or fish pound placed or put in the waters of any lake, pond, or reservoir contrary to the provision of this act.

Fine reduced from $200, 1875, p. 6.

Secs. 5669 to 5671. "An act to prohibit the catching of game fish in certain cases." 1875, p. 23; as amended 1879, p. 71.

5669. It shall be unlawful for any person to catch, kill, injure, or destroy any fish in any public water in this state or in the Missouri river along the eastern boundary of this state in any manner whatever, except with the use of the hook and line; the use of seines, nets, and other devices, except the hook and line, being hereby prohibited and made unlawful. It shall also be unlawful for any person, association of persons, or corporation to place or establish any obstruction across any stream of water in this state that shall prevent the free passage of fish along said stream; *Provided*, That all persons, associations of persons, or corporations erecting, owning, or maintaining a mill-dam across any stream of water in this state shall, at his or its own expense, construct and at all times maintain, subject to the approval of the fish commission, a suitable and substantial fish-way whereby all fish passing along said stream can readily pass over or around said dam. Public waters, within the meaning of this section, shall embrace all lakes, ponds, rivers, creeks, bayous, and streams, except private artificial pond or ponds, subject to the exclusive dominion of a single ownership. Every violation of any provision of this section shall be a misdemeanor, and every person, association, or corporation convicted of an offense under this section shall pay a fine not less than twenty-five (25) dollars and costs of prosecution, or imprisonment in the county jail not less than ten days, or until such fine and costs are paid. It shall be unlawful for any person to have in his or her possession any seine, net, or other unlawful instrument or device for taking or injuring fish with the intent of using the same in any water in this state, and it is hereby made the duty of all constables, justices of the peace, and police judges of this state to prosecute all offenses against this act. Each day any mill-dam or other obstruction shall be continued without such fishway shall be deemed and taken as a separate offense under this act. Every seine, net, or other unlawful device under this act found in any water in this state or in the possession of any person intending to use the same in violation of this act may be seized by any person with or without warrant and deposited with a justice of the peace or police judge, who shall cause the owner or person having such seine, net, or other unlawful device in his possession, if known, to appear before said court and show cause why such seine, net, or unlawful device should not be destroyed; such court shall, upon such hearing, or upon default, enter judgment, and in all cases of condemnation such seine, net, or unlawful device shall be destroyed under the direction of said court. In all cases under this act the constable and justice's fees shall be the same as in other cases of misdemeanors.

Amended 1887, p. 662.

5670. It shall be unlawful for any person or persons to injure, disturb, or destroy any hatching-box, hatching-house, or pond used for hatching or propagating fish, or to injure, or destroy, or disturb any spawn, or fry, or fish in any hatching-box, hatching-house, or pond, or stream; *Provided*, That the fish commissioner of this state may take or cause to be taken any of the fish named in this section for the purposes of propagation, or stocking the waters of this state. Every person violating any provision of this section shall be deemed guilty of a misdemeanor, and punished by a fine of not more than ten dollars for each fish taken, or held in possession, or other offense under this section, or by imprisonment in the county jail not more than ten days, or both fined and imprisoned, in the discretion of the court.

5671. It shall be unlawful for any person or persons to catch, injure or kill, or destroy any California salmon, land-locked salmon, trout, shad, white fish, or carp which shall have been planted or placed in any waters of this state by the fish commissioner, or by private persons. Every person violating any provision of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than ten dollars for each fish so taken, injured, killed, or destroyed, or had in possession, or imprisoned in the county jail not less than ten days, or both fined and imprisoned, in the discretion of the court. The having in possession of any fish named in this section shall be presumptive evidence that the same were taken in violation of law.

CHAPTER XII.—INJURIES TO TREES, FRUITS, AND VEGETABLES.

5672 (88). If any person or persons shall willfully and maliciously and without lawful authority box, bore, bark, girdle, saw, cut down, injure, or destroy, **to the amount** in value **of thirty-five dollars** or upwards, any fruit, ornamental, shade, or other tree or trees, standing or growing in any orchard, nursery, or grove, the property of another, every such person or persons shall be imprisoned in the penitentiary and kept at hard labor not more than ten years nor less than one year, and shall, moreover, be liable to the party injured in double the amount of damages by him sustained.

Complaint under this must truly allege the ownership of trees. **17,** 146 (22 N. W., 352). Indictment held sufficient. **14,** 485 (16 N. W., 907).

5673 (89). If any person shall wrongfully, and without any lawful authority, cut down, fell, box, bore, or otherwise injure or destroy any living tree or trees standing or growing on any land owned by or belonging to any other person or persons, body politic or corporate, **in** any **case other than** in the **preceding** section mentioned, every such person so offending shall be fined in any sum not exceeding one hundred dollars nor less than five dollars; and shall, moreover, be liable to the action of the party injured in double damages.

Fine reduced from $200, 1875, p. 6.

5674 (90). If any person shall wantonly, willfully, or maliciously cut down, injure, or destroy any living **ornamental** tree or **trees**, either planted or preserved as such, standing or growing **on** any **common or** public ground, or any **street,** alley, sidewalk, avenue, or promenade, every person so offending shall, on conviction thereof, be fined in any sum not more than one hundred dollars nor less than five dollars; and shall, moreover, be liable to the action of the party injured, in double the damage sustained.

Fine reduced from $300, 1875, p. 6.

5675 (91). If any person or persons shall willfully and maliciously, and without lawful authority, cut down, root up, sever, carry away, injure, or destroy any fruit or **ornamental tree,** shrub, bush, or vine, or any **cultivated** root, **plant,** or **fruit,** or other vegetable production, standing, growing, or being on or attached to the lands of another, or shall willfully and without lawful authority cut down, root up, carry away, destroy, or injure any fruit, shade, or ornamental tree, **vine, or shrub,** planted or growing on any street, lane, or alley, state, or county, or other public road, or on any public grounds in any city, borough, incorporated village, or town, or in any cemetery, or upon any burying ground within this state, every such person or persons shall be fined in any sum not exceeding one hundred dollars nor less than five dollars, and be liable to the party injured in double the amount of damages sustained.

Fine reduced from $400, 1875, p. 7.

5676 (92). Where there is a charge or **indictment for stealing trees, fruits, or vegetables,** the same may be sustained, though it should appear from the evidence that the trees, fruits, or vegetables were at the time of taking the same attached to the freehold property.

CHAPTER XIII.—Injuries to Railroad and Telegraph Property.

5677 (93). Every person who shall willfully and maliciously remove, break, displace, throw down, destroy, or in any manner injure any iron, wooden, or other rail, or any branches, or branchways, or any part of the tracks, or any bridge, viaduct, culvert, trestle-work, embankment, parapet, or other fixture, or any part thereof, attached to or connected with such tracks of any railroad in this state, now in operation, or which shall hereinafter be put in operation, or who shall willfully and maliciously place any obstructions upon the rail or rails, track or tracks of any such railroad, shall be punished by imprisonment in the penitentiary not less than one year nor more than twenty years; *Provided, however,* That if any person shall, by the commission of either of the aforesaid offenses, occasion death of any person or persons, the person or persons so offending shall be deemed guilty of murder in the first or second degree, or manslaughter, according to the nature of the offense, and. on conviction thereof, shall be punished as in other cases.

5678 (94). Every person who shall draw or drive any wagon, carriage, cart, coach, gig, or other two or four-wheeled vehicle on or between the rails or tracks, or on or along the graded roadway of such road (unless compelled by necessity so to do), without the knowledge and consent of the company owning or controlling said road, shall be fined in any sum not exceeding twenty-five dollars, nor less than five dollars.

5679 (95). Every person who shall willfully and maliciously throw down, break, remove, displace, cut, split, burn, or in any other manner destroy or injure any of the rails, sills, cross-ties, piles, bridges, culverts, viaducts, parapets, or any other fixture to the value of thirty-five dollars or upward, or shall willfully and maliciously injure or destroy any embankment of any railroad within this state, now constructed, or in process of construction, or any railroad which shall hereafter be constructed, or in process of construction, to the value of thirty-five dollars or upwards, shall be punished by imprisonment in the penitentiary not exceeding three years nor less than one year.

5680 (96). Every person who shall willfully and maliciouly cut, break, burn, injure, or destroy any locomotive, car, or other machinery now, or which may hereafter be in use upon any railroad within this state, or any wood house, car house, or water station erected for the accommodation and use of any railroad within this state, to the value of thirty-five dollars or upward, shall be punished by imprisonment in the penitentiary not exceeding three years nor less than one year.

5681 (97). Every person who shall willfully or maliciously commit any of the acts or offenses enumerated in the last two preceding sections, but the injury or damage therefrom shall be of a less value than thirty-five dollars, every person so offending shall be fined in any sum not exceeding one hundred dollars, nor less than five dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

5682 (98). Every person who shall willfully and maliciously injure, molest, or destroy any of the lines, wires, posts, piers, or abutments of any telegraph company, owner, or association, or any other materials or property of such company, owner, or association, used in or about the transmission of dispatches or other communications, shall be punished by imprisonmont in the penitentiary not less than one year nor more than three years, in case the damage to such company, owner, or association, from such injury, be thirty-five dollars or upward; but if such damage be less than thirty-five dollars, then the person so offending shall pay a fine of not less than ten dollars nor more than five hundred dollars.

CHAPTER XIV.—INJURIES TO PROPERTY GENERALLY.

5683 (99). If any person shall knowingly, willfully, and maliciously demolish, cut down, or **destroy** any private, public, or toll **bridge**, cut, fell, deface, **alter**, or remove any **landmark**, corner, or bearing tree, properly established, the person so offending shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the jail of the county not exceeding thirty days, or both, at the discretion of the court.

5684 (100). If any person shall willfully and maliciously demolish, throw down, alter, or **deface** any **mile stone**, mile board, **or** guide **board**, on or at the fork of any public road, every person so offending shall be fined in any sum not exceeding fifty dollars or be imprisoned in the jail of the county not exceeding ten days, or both, at the discretion of the court.

5685 (101). If any person shall willfully or maliciously alter, deface, break down, or destroy any monument or **tombstone**, erected or set up to perpetuate the memory of any deceased person, every person so offending shall be fined in any sum not exceeding two hundred dollars, and be imprisoned in the county jail not exceeding thirty days, at the discretion of the court.

5686 (102). Any person who shall willfully destroy, mutilate, **deface**, injure, or remove any tomb, monument, or gravestone, or other **structure** placed **in** any **cemetery**, or any fence, railing, or other work for the protection or ornament of a cemetery, or tomb, monument, or gravestone, or other structure aforesaid, or of any cemetery lot within a cemetery, shall be punished by a fine of not less than five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of not less than one nor more than thirty days; and such offender shall also be liable in an action of trespass, in the name of the association or other owner of such cemetery, to pay all such damages as have been occasioned by his unlawful act or acts.

5687 (103). If any person or persons shall wantonly or maliciously throw, put, or lay down, prostrate, deface, or **injure** any **fence** enclosing an orchard, pasture, meadow, garden, yard, or other field or enclosure, the property of, or lawfully occupied by any other person or persons, or corporation, or shall wantonly or maliciously open, let down, throw down, prostrate, injure, or deface any **gate**, or bars belonging to any such enclosure, every such person or persons shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the jail of the county, not exceeding thirty days, or both, at the discretion of the court.

5688 (104). If any person shall intentionally **deface**, obliterate, tear down, or destroy, in whole or in part, any copy or transcript of, or extract from any law of the United States or of this state, or any **proclamation**, publication, **advertisement**, or notification, whatsoever, set up in any public place, within this state, for the public information of any citizen, by the authority of any law or act of this state, such person shall be fined in any sum not exceeding ten dollars, and may be committed to jail for a time not exceeding twenty-four hours.

5689 (105). No person shall carry fire across any **wooden bridge**, on any lawful public road in this state, unless in a lantern or close vessel; and no person shall ride or drive any horse or horses, stage coach, or other vehicle, over any such bridge faster than a walk; and any person who shall be convicted of a violation of either of the provisions of this section shall pay a fine of five dollars.

5690 (106). Any person who shall willfully and maliciously injure any lawful public road in this state, or any bridge, gate, or mile stone, or other fixture, on any such road, shall, for every such offense, pay a fine not exceeding fifty dollars nor less than ten dollars; and, moreover, be liable to any party injured in double damages.

5691 (107). Any person who shall deposit any wood, stone, or other kind of materials, on any part of any lawful public road, in this state, inside of the ditches of such road, or outside of the ditches, but so near thereto as to cause the banks thereof to break into the same, or cause the accumulation of rubbish, or any kind of obstruction, shall, for every such offense, pay a fine of five dollars.

5692 (108). That if any person shall willfully and maliciously destroy or injure to the amount of one hundred dollars, any personal property of any description whatsoever, or any building or other structure upon land of any kind whatsoever, owned by any other person or persons, corporation, or association of persons, every person so offending shall be punished by imprisonment in the penitentiary not less than one year, nor more than three years; and, moreover, be liable to the party injured in double the amount of damages sustained thereby.

5693 (109). If any person shall willfully and maliciously injure or destroy to any amount less than one hundred dollars, any personal property of any description whatsoever, or any building or other structure of any kind, owned by another person, every person so offending shall be imprisoned in the jail of the proper county not exceeding thirty days, and shall, moreover, be fined in double the amount of the damage of the property injured or destroyed.

5694 (110). If any person shall willfully and maliciously destroy or injure to the amount of thirty-five dollars and upwards, any salt well, salt furnace, or engine connected therewith, such person shall be confined in the penitentiary for any term not less than one nor more than three years, and shall, moreover, be liable to the party injured in double the amount of damages sustained thereby.

5695 (111). If any person shall willfully and maliciously injure or deface any church edifice, school house, dwelling house, or other building, its fixtures, books, or appurtenances, or shall commit any nuisance therein, or shall purposely and maliciously commit any trespass upon the enclosed grounds attached thereto, or any fixtures placed thereon, or any enclosure or sidewalk about the same, such person shall be fined in any sum not exceeding one hundred dollars.

5696 (112). If any person shall unlawfully and maliciously or wantonly lose, take, sink, injure, or deface, or in any other manner render the same unfit for use by the owner, any boat or other craft used or kept by any person or persons within the state of Nebraska, to be used on any river, or other water-course, or on any lake or pound within this state, such person shall be fined in any sum not less than five dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding forty days, or both, at the discretion of the court, and shall, moreover, be liable to the party injured in double the amount of the damages.

5697 (113). If any person shall intentionally deface, obliterate, tear, or destroy in whole or in part, any newspaper, magazine, or periodical on file in any reading room belonging to the state, or any library or other association in this state, or shall cut therefrom any article or advertisement, such person shall, upon conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than ten dollars, or be imprisoned in the county jail not exceeding thirty days, or both, at the discretion of the court.

CHAPTER XV.—Stealing, Abetting the Same, and Destroying Written Instruments.

Sec. 5698. "An act defining the crime of **larceny from** the **person** and providing a penalty therefor." 1887, p. 658. In force July 1.

5698. Every person who steals property of any value by **taking** the same **from** the **person** of another without putting said person in fear by threats or the use of force and violence, shall be deemed guilty of grand larceny, and shall, upon conviction thereof, be punished by confinement in the penitentiary for not less than one nor more than seven years.

Conversion of property not larceny. **5,** 548.

5699 (114). If any person shall **steal** any money, or goods and chattels, of any kind whatever, whether the same be wholly money, or wholly in other property, or partly in money and partly in other property, the property of another, of the value of thirty-five dollars or upward; or shall steal, **or** maliciously **destroy** any money, promissory note, bill of exchange, order, draft, receipt, warrant, check, or bond, given for the payment of money, or receipt acknowledging the receipt of money, or other **property, of the value of thirty-five dollars** or upwards, every such person shall be imprisoned in the penitentiary not more than seven years nor less than one year; *Provided*, The word "money," in this section, shall be deemed and taken as including bank bills or notes, United States treasury notes, or other bills, bonds, or notes issued by lawful authority, and intended to pass and circulate as money.

Definition of larceny. **4,** 528. Rule for fixing value in case of clothing, etc. **28,** 389 (44 N. W., 436). Possession of a part of stolen goods presumptive evidence that person charged stole all. **6,** 107. Possession of goods soon after theft, presumption left with the jury. **4,** 529.

5700 (115). If any person shall **receive** or buy any **bank** bill or **bills,** or promissory note or **notes,** bill of exchange, order, receipt, draft, warrant, **check,** or **bond,** given for the payment of money, of thirty-five dollars or upwards, which have been **stolen,** knowing the same to be stolen, with intent to defraud the owner thereof, every person so offending shall be imprisoned in the penitentiary not more than seven years, nor less than one year.

5701 (116). If any person shall **receive** or buy any **goods** or chattels of the value [of] thirty-five dollars or upwards, that shall be **stolen** or taken by robbers with intent to defraud the owner, or shall harbor or conceal any robber or thief guilty of felony, knowing him or her to be such, every person so offending shall be imprisoned in the penitentiary not more than seven years, nor less than one year.

Burden is on state of proving value of goods to be $35. **11,** 541 (10 N. W., 453). Receiving or buying stolen goods, with intent to defraud the owner, is not an accessory, but a substantive offense, and a conviction may be had without regard to the person who stole the goods, or from whom they were received. **14,** 3 (14 N. W., 543).

5702 (117). If any person shall **steal** any **horse,** mare, gelding, foal or filly, ass or mule, of any value; or, if any person shall **receive or buy** any **horse,** mare, gelding, foal or filly, ass or mule, that shall have been **stolen,** knowing the same to have been stolen, with intent, by such receiving or buying, to defraud the owner; or, if any person shall **conceal** any **horse thief,** knowing him to be such; or, if any person shall conceal any horse, mare, or gelding, foal or filly, ass or mule, knowing the same to have been stolen; every such person so offending shall be imprisoned in the penitentiary not more than ten nor less than one year.

Penalty reduced from fifteen and three years, 1883, p. 333. A prosecution will lie under this act for a crime committed before the amendment, as only the penalty was changed. **15,** 448 (19 N. W., 686). There is no grand and petit larceny in horse-stealing. The character of the crime is the same whether the value of the horse be $500 or $20. **11,** 410 (9 N. W., 552). Sentence for ten years held excessive. **14,** 505 (16 N. W., 829).

5703 (118). If any person or persons shall, either during the life of the devisor, testator, or testatrix, or after his or her death, **steal**, or for any fraudulent purpose destroy or secrete any will, codicil, or other **testamentary instrument**, whether the same relate to real or personal estate, or both, or shall procure the same to be done, every such person shall be imprisoned in the penitentiary not less than one year nor more than ten years. It shall not be necessary, in any indictment for the offense herein named, to allege that such will, codicil, or other instrument is the property of any person, or that the same is of any value.

5704 (119). If any person shall **steal** any money or **goods** and chattels of any kind whatever, **of less value than thirty-five dollars**, the property of another, or shall steal or maliciously **destroy** any money, promissory **note**, bill of exchange, order, draft, receipt, **warrant**, check, or **bond** given for the payment of money, or receipt acknowledging the receipt of money or other property of less value than thirty-five dollars, every person so offending shall make restitution to the party injured in twofold the value of the property stolen or destroyed, and be fined in any sum not exceeding one hundred dollars, or shall be imprisoned in the county jail for any time not exceeding thirty days. The word "money," in the section, shall be held to include bank bills or notes, United States treasury notes, or other bills, bonds or notes, issued by lawful authority and intended to pass and circulate as money.

Fine reduced from $200, 1875, p. 7.

5705 (120). If any person shall **conceal** any stolen money, goods, or **chattels** of any kind whatever, **of less value than thirty-five dollars**, or shall conceal any bank bill or bills, promissory note or notes, bill of exchange, order, warrant, draft, check, or bond, or any accountable receipt for money, given for the payment or acknowledgment of any sum under thirty-five dollars, the person so concealing, knowing the same to have been stolen, shall be fined for every such offense in any sum not exceeding one hundred dollars, or shall be imprisoned in the county jail not exceeding thirty days, either or both, at the discretion of the court.

Fine reduced from $200, 1875, p. 8.

CHAPTER XVI.—Embezzlements and Frauds.

5706 (121). If any clerk, agent, attorney at law, or servant of any private person or any copartnership, except apprentices and persons within the age of eighteen years, or if any officer, attorney at law, agent, clerk, or servant of any incorporated company or joint stock company shall **embezzle** or convert to his own use, or fraudulently take or make away with or secrete with intent to embezzle or fraudulently convert to his own use without the assent of his or her employer or employers, or the owner or owners thereof, any money, goods, rights in action, or other valuable security, or effects whatever, belonging to any other persons, body politic or corporate, which shall come into his or her possession or care, by virtue of such employment, or if any officer elected or appointed to any office of public trust in the state, or if any executor, administrator, guardian, or assignee for the benefit of creditors shall embezzle or convert to his or her own use any money, property, rights in action, or other valuable security or effects whatever, belonging to any individual, or company, or association that shall come into his or her possession by virtue or under color of his or her relation as officer, executor, administrator, guardian, or assignee, every such person so offending shall be punished in the manner provided by law for feloniously stealing property of the value of the article so embezzled, taken, or secreted, or of the value of any sum of money payable or due upon any right in action so embezzled. Every embezzlement of any evidence of any debt negotiable by delivery only, and actually executed by the master or employer of any such clerk, agent, officer, attorney at law, or servant, but not delivered or issued as a valid instrument, shall be deemed an offense within the meaning of this section.

Amended 1885, p. 391. Owner must be deprived of the property to constitute embezzlement. **18,** 440 (25 N. W., 609). Until attorney's lien on money in his hands is discharged, he cannot be prosecuted for embezzlement thereof. **24,** 737 (40 N. W., 289).

Secs. 5707 to 5709 formed secs. 2 to 4 of an act defining certain crimes and providing punishment therefor. 1875, p. 26. In force June 1.

5707. That if any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank bill, or note, or goods, or chattels shall be entrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill, or note, or goods, or chattels, or any part thereof, with intent to steal the same and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, shall **embezzle** the said money, bank bill, or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

5708. That if any **bailee** of any money, bank bill, or note, goods or chattels shall **convert** the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

5709. That if any **lodger** shall take away, with intent to steal, embezzle, or **purloin** any bedding, **furniture,** goods, or chattels which he or she is to use in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction, shall be punished accordingly.

5710 (122). Every person who shall **buy or** in any way **receive** any money, **goods,** rights in action, or any valuable security or effects whatever, knowing the same to have been **embezzled,** taken, or secreted, contrary to the provisions of the last section, shall be punished in the same manner, and to the same extent, as therein prescribed, upon a conviction of a servant for such embezzlement.

5711 (123). If any **carrier or** other person to whom any goods, money, right in action, or any valuable personal property or effects shall have been delivered to be transported or carried for hire; or if any person employed in such transportation or carrying shall, without assent of his employer, take, embezzle, or convert to his own use, such goods, moneys, rights in action, property, or effects, or any part of them, and before delivery of such article at the place or to the person entitled to receive them; or if any **innkeeper** shall **embezzle** or convert to his own use, or fraudulently take, make away with, or secrete, with intent to embezzle or fraudulently convert to his own use, without the consent of his guest, any money, bank notes, jewelry, articles of gold or silver manufacture, precious stones or bullion, delivered to such inn keeper by his guest for safe custody, every such person shall be punished in the manner prescribed by law for feloniously stealing property of the value of the article or articles so embezzled, taken, or secreted.

5712 (124). If any officer or other person charged with the collection, receipt, safe keeping, transfer, or disbursement of the **public money,** or any part thereof, belonging to the state or to any county, or precinct, organized city or village, or school district in this state, shall convert to his own use, or to the use of any other person or persons, body corporate, association or party whatever, in any way whatever, or shall use by way of investment in any kind of security, stock, loan, property, land, or merchandise, or in any other manner or form whatever, or shall loan, with or without interest, to any company, corporation, association, or individual, any portion of the public money, or any other funds, property, bonds, securities, assets, or effects of any kind, received, controlled, or held by him for safe keeping, transfer, or disbursement, or in any other way or manner, or for any other purpose; or, if any person shall advise, aid, or in any manner participate in such act, every such act shall be deemed and held in law to be an **embezzlement** of so much of the said moneys or other property as aforesaid, as shall be thus converted, used, invested, loaned, or paid out as aforesaid, which is hereby declared to be a high crime, and such officer or person or persons shall be imprisoned in the penitentiary not less than one year nor more than twenty-one years, according to the magnitude of the embezzlement, and also pay a fine equal to double the amount of money or other property so embezzled as aforesaid, which fine shall operate as a judgment at law on all of the estate of the party so convicted and sentenced, and shall be enforced to collection by execution or other process, for the use only of the party or parties whose money or other funds, property, bonds, or securities, assets, or effects of any kind as aforesaid, has been so embezzled. And in all cases, such fine so operating as a judgment shall only be released or entered as satisfied by the party in interest as aforesaid. Any failure or refusal to pay over the public money, or any part thereof, by any officer or other person charged with the collection, receipt, transfer, disbursement, or safe-keeping of the public money, or any part thereof, whether belonging to the state, or to any county, or precinct, or school district, or organized city or incorporated village in this state, or any other public money whatever; or any failure to account to, or to make settlement within a reasonable time after a notice so to do, with any proper and legal authority of the official accounts of such officer or person, shall be held and taken as *prima facie* evidence of such embezzlement. And the refusal of any such officer or person, whether in or out of office, to pay any draft, order, or warrant which may be drawn upon him, by the proper officer, for any public money in his hands, no matter in what capacity the same may have been received or may be held by him, or any refusal, by any person or public officer named in this act, to pay over to his successor any public moneys, or securities promptly, on the legal requirement of any authorized officer of the state or county, shall be taken, on the trial of any indictment against such officer or person for embezzlement, as *prima facie* evidence of such embezzlement.

Form of indictment against school district treasurer. **17,** 683 (24 N. W., 382).

5713 (125). If any person, by false pretense or pretenses, shall obtain from any other person any money, goods, merchandise, or effects whatsoever, with intent to cheat or defraud such person of the same *or shall sell, lease, or transfer any void or pretended patent right as certificate of, in a pretended corporation and take the promissory note or other valuable thing of such purchaser,* or shall fraudulently make and transfer any bond, bill, deed of sale, gift, grant, or other conveyance to defraud his creditors of their just demands, *or if he shall obtain the signature or endorsement of any person to any promissory note, bank check, draft, bill of exchange or any other instrument in writing, fraudulently or by misrepresentation, if the value of the property or promissory note or written instrument, fraudulently obtained or conveyed as aforesaid, shall be thirty-five dollars ($35) or upwards,* such person so offending shall be imprisoned in the penitentiary not more than five years nor less than one year, but if the value of the property be less than thirty-five dollars ($35) the person so offending shall be fined in any sum not exceeding one hundred dollars ($100), or be imprisoned in the jail of the county not exceeding thirty days, and be liable to the party injured in the amount of damages sustained.

Clauses between first two and last two ** inserted and penalty changed, 1891, p. 405. Police court had no jurisdiction in case stated. Copy of complaint for, set out. **11,** 310 (9 N. W., 33).

5714 (126). If any person shall **falsely personate any other,** before any court of record, or judge thereof, or before any justice of the peace, clerk of either the supreme court or other court, or any other officer of this state, who is, or may hereafter be, authorized to take the acknowledgment of deeds, powers of warrants of attorney, or to grant marriage licenses, with intent to defraud any person, body politic or corporate, any person so offending shall be imprisoned in the penitentiary not exceeding six years.

5715 (127). If any person or persons shall knowingly **sell** or convey any tract of **land without** having a **title** to the same, either in law or equity, by descent, device, or evidence, by a written contract or deed of conveyance, with intent to defraud the purchaser, or other person, every person so offending shall be imprisoned in the penitentiary not more than seven years nor less than one year.

5716 (128). Every factor or **agent** who shall deposit any merchandise entrusted or consigned to him, or any document so possessed or entrusted aforesaid, as a security for any money borrowed, or negotiable, instrument received by such factor or agent, and shall apply or dispose of the same to his own use, contrary to good faith, and with **intent to defraud** the true owner, and every factor or agent who shall **sell** any merchandise or other **property** entrusted or **consigned to him,** in the like manner, and with the like fraudulent intent, and every other person who shall knowingly connive with, or aid, or assist any such factor or agent in any such fraudulent deposit or sale, shall be imprisoned in the penitentiary not exceeding three years nor less than one year.

5717 (129). If the **owner of** any **merchandise,** or other person in whose name any merchandise shall be shipped or **delivered** to the keeper of any warehouse, or other factor, or agent, to be shipped, shall, **after** the **advancement** to him or them of any money, or the giving to him or them of any negotiable security, by the consignee or consignees of such merchandise, without the consent of such consignee or consignees being therefor first had and obtained, make any disposition of such merchandise, different from, and inconsistent with that agreed upon between such owner or other person aforesaid, and such consignee or consignees, at the time of said money being so advanced, or said negotiable security being so given, with intent to defraud or injure such consignee or consignees, said owner or other person aforesaid, and all other persons conniving with him or them for the purpose of deceiving, **defrauding,** or injuring the said **consignee,** shall be imprisoned in the penitentiary not more than three years nor less than one year; *Provided, however,* That no person shall be subject to prosecution under this section who shall, before disposing of such merchandise, pay, or offer to pay, to the consignee or consignees the full amount of any advancement made thereon.

5718 (130). If any person shall execute and deliver, or shall cause, or procure to be executed and delivered to any person, any **false** or fictitious **bill of lading,** receipt, schedule, invoice, or other written instrument, to the purport and effect that any goods, wares, merchandise, live stock, or other property usually transported by carriers, had been or were held, delivered, received, placed, or deposited on board of any steamboat, or water craft, navigating the waters in or bordering upon the state of Nebraska, or at the freight office, depot, station, or other place designated or used by any railroad company or other common carrier, for the reception of any such property so usually transported by carriers, when such goods, wares, merchandise, live stock, or other property were not held, or had not in fact and in good faith been delivered, received, or deposited on board of such steamboat, or other water craft, or at such freight office, depot, station, or other place so designated or used by any common carrier for the reception of such property, when such bill of lading, receipt, invoice, schedule, or other written instrument was made and delivered, according to the purport and effect of such bill of lading, receipt, invoice, schedule or other written instrument, with intent to deceive, defraud, or injure any person or corporation, or if any person shall attempt to endorse, assign, transfer, or put off any such false or fictitious bill of lading, receipt, invoice, schedule, or other written instrument, knowing the same to be false, fraudulent, or fictitious, the person so offending shall be imprisoned in the penitentiary not exceeding four years nor less than one year.

5719 (131). If any person shall execute and deliver, or shall cause or procure to be executed and delivered, to any other person any **false** and fictitious **warehouse receipt,** acknowledgment, or other instrument of writing, to the purport and effect that such person, or any other person or persons, copartnership, firm, body politic or corporate, which he or she represents, or pretends to represent, held or had received in store, or held or had received in any warehouse, or in any other place, or held or had received into possession, custody, or control of such person or persons, copartnership, firm or body politic, any goods, wares, or merchandise, when such goods, wares, or merchandise were not held and had not been received in good faith, according to the purport and effect of such warehouse receipt, receipt, acknowledgment, or instrument of writing, with intent to defraud, deceive, or injure any person whomsoever, or if any person shall endorse, assign, transfer, or deliver, or shall attempt to endorse, transfer, or deliver, to any other person any such false and fictitious warehouse receipt, receipt, acknowledgment, or instrument of writing, knowing the same to be false, fraudulent, or fictitious, such person shall be punished by imprisonment in the penitentiary not more than three years nor less than one year.

5720 (132). If any person or persons, or the agent of any person or persons, having in his or their possession, custody, or control any goods, wares, or merchandise, by virtue of any genuine instrument of writing, of the purport or effect of any such instrument of writing as is mentioned in either of the last two preceding sections, shall without authority, and with intent to injure or defraud the rightful owner thereof, sell, assign, **transfer,** or incumber **such goods,** wares, or merchandise, or any part thereof, to the value of fifty dollars or upward, or shall in any way **convert** the same to his own use, or if the consignor or consignors, or the agent of such consignor or consignors of any goods, wares, or merchandise, not being the absolute owner thereof, and not having authority to stop, **countermand,** or change the **consignment** thereof, or not having authority to sell or incumber the same during the transit, shall, after the shipment thereof on board any water craft, or, after the deposit thereof in or upon any vehicle for land carriage, in any way stop, countermand, or change the consignment thereof, or shall sell, dispose of, or incumber such goods, wares, or merchandise, during their transit, or after their delivery, or shall in any way convert the same, or any part thereof, to his or her own use, to the value of fifty dollars or upward, so that the rightful owner thereof shall sustain a loss thereby to the value of fifty dollars or upward, the person so offending, with intent as aforesaid, shall be imprisoned in the penitentiary for a term not less than one nor more than four years.

5721 (133). Any **railroad** company, whose agent or agents shall knowingly **divert,** or permit to be diverted, any **freights** that may come under his or their control, from the railroad or railroads over which the same may have been ordered to be conveyed, as aforesaid, shall forfeit and pay to the railroad company or companies from which said freights have been so diverted, three times the amount received for transporting such freights; and such agent or agents shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court; *Provided,* That the provisions of this act shall in no way interfere with any lawful obligations heretofore entered into by any railroad company.

5722 (134). Every partner who shall be guilty of any **fraud in** the affairs of the **partnership,** shall be liable civilly to the party injured to the extent of his damage, and shall be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or both, at the discretion of the court.

5723 (135). Every president, director, cashier, teller, clerk, or agent of any **banking** company, who shall embezzle, abstract, or willfully misapply any of the moneys, funds, or credits of such company, or shall, without authority from the directors, issue or put in circulation any of the notes of such company, or shall, without such authority, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or shall make any false entry on any book, report or statement of the company, with an **intent** in either case **to** injure or **defraud** such company, or to injure or defraud any other company, body corporate or politic, or any other individual person, or to deceive any officer or agent appointed to inspect the affairs of any banking company in the state, shall be confined in the penitentiary not less than one year nor more than ten years.

5724 (136). Any person or persons who shall knowingly and willfully sell, or direct, or permit any person or persons in his or their employ to sell any commodity or article of merchandise, and make or give any **false** or short **weight or measure,** or any person or persons owning or keeping or having charge of any scales or steelyards for the purpose of weighing live stock, hay, grain, coal, or other articles, who shall knowingly and willfully report any false or untrue weight, whereby any other person or persons may be defrauded, or injured, such person or persons shall be fined in any sum not exceeding fifty dollars, or be imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court, and also be answerable to the party defrauded or injured in double damages.

Complaint for making false weights; evidence examined and held properly admitted. **22,** 668 (35 N. W., 891).

5725 (137). Any person, agent, or clerk who shall put up, or shall order or procure any other person to put up or pack sugar, rice, tobacco, soap, starch, candles, cheese, or any **goods** or articles **sold by weight,** packed in kegs, barrels, tierces, casks, boxes, hogsheads, or any case whatever, shall, in every instance, first weigh the entire box or cask, or whatever it may be, and plainly cut or mark upon the head, or most convenient part thereof, the exact number and fractions of pounds it weighs, and when packed or filled shall again ascertain the whole weight, and place the same immediately above the cut or **marked** tare weights, and subtract the one from the other, showing the net weight of the contents, which calculation shall not be obliterated while the bulk remains unbroken; and said articles, until the bulk is broken, shall be sold by the net weight; *Provided, however,* That nothing in this section shall be so construed as to release any person from the liability of allowing the actual tare at the time of sale on all kegs, barrels, tierces, casks, boxes, hogsheads, or cases containing articles which by their nature are liable to change the original tare.

5726 (138). Any **brand, mark,** or stamp put upon any keg, barrel, box, cask, hogshead, or case, by the manufacturer, indicating the articles, its quality, quantity, or the manufacturer's name, or either of them, shall be considered the manufacturer's certified brand, stamp, or mark, and shall be put thereon in such manner as to be identified by the manufacturer or his authorized agent, which shall be subject to **no erasure** or obliteration; neither shall such box lids, keg, barrel, hogshead, tierce, or cask heads, be transferred from one to the other, for the purpose of taking advantage of said brands, stamps, or marks, to sell an inferior article, or repacking take place, putting an inferior article into a superior branded keg, barrel, cask, hogshead, box, or case, to accomplish the same design; or to mark, or remark, anything containing pound bulk, so as to hide from view the original manufacturer's mark, stamp, or brand.

5727 (139). Any person, directly or indirectly transgressing any of the provisions enumerated in the last two preceding sections shall, in all cases, pay to the party aggrieved double in value of the difference between the actual quantity contained in such keg, barrel, cask, tierce, box, hogshead, or in whatever the same may be contained, and the net quantity or weight for which the same may have been sold; and for the first offense be subject to a fine not less than twenty nor more than sixty dollars, or imprisonment in the county jail not less than thirty days nor more than sixty days; and for the second and every subsequent offense he shall be subject to a fine not less than fifty dollars nor more than one hundred dollars, or imprisonment in the county jail not less than thirty nor more than ninety days.

Fine reduced from $200, 1875, p. 10.

5728 (140). If any person shall put into any barrel, cask, or other vessel having the private stamp, brand, wrapper, label, or trade mark usually affixed by any maker of wine from grapes grown within the state of Nebraska, adulterated liquors for the purpose of deceiving any person by the sale thereof, * or of [if] any person or persons shall knowingly manufacture, vend, or give away, or direct, or permit any person or persons in his or their employ to manufacture, vend, or give away any malt, spirituous liquors, or other compound, any of which shall be adulterated with poisonous ingredients, such as strychnine, strontia, sugar of lead, or other poisonous substances,* such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding three months, or both, at the discretion of the court. *An analysis made by a practical chemist shall be deemed competent [testimony] in all cases arising under this section.

All between first two ** and all after third * added, and penalty changed, 1875, p. 10.

MINERALS AND MINERAL WATERS.

Secs. 5729 to 5733. "An act to protect manufacturers, bottlers, and dealers in soda and mineral waters and other beverages, from the loss of their casks, barrels, kegs, bottles, and boxes." 1883, p. 241. In force June 1.

5729. That all persons engaged in the manufacture, bottling, or selling of soda, mineral waters, or other beverages in casks, barrels, kegs, bottles, or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the county clerk of the county in which such articles are manufactured, bottled, or sold a description of the name or marks so used by them, and cause the same to be printed for two (2) successive weeks in a weekly newspaper printed in the English language, and in counties where such articles are manufactured, bottled, or sold.

5730. It shall be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with soda, mineral water, or other beverages, or any other articles of merchandise, medicine, compound, or preparation, for sale, or to be furnished to customers, any such casks, barrels, kegs, bottles, or boxes, so marked or stamped, or to sell, dispose of, buy, or traffic in, or wantonly destroy any such casks, barrel, keg, bottle, or box so marked or stamped by the owner or owners thereof, after such owner or owners shall have complied with the provisions of the first section of this act. Any person or persons who shall violate any provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace or police judge in this state, shall be fined five dollars ($5) for each and every cask, barrel, keg, or box, and fifty cents

(50) for each and every bottle so by him, her, or them filled, bought, sold, used, trafficked in, or wantonly destroyed, or by him, her, or them caused to be filled, bought, sold, used, trafficked in or wantonly destroyed, together with the cost of suit for the first offense, and ten dollars ($10) for each and every cask, barrel, keg, or box, one dollar ($1) for each and every bottle so filled, bought, sold, used, trafficked in or wantonly destroyed, or caused to be so filled, bought, sold, used, trafficked in or wantonly destroyed, together with the costs of suit for each subsequent offense.

5731. The **using** by any other person than the righful owner thereof, without such written permission, of any such cask, barrel, keg, bottle, or box, for the sale therein of soda, mineral water, or other beverage, or any other article of merchandise, medicine, compound, or preparation, or to be furnished to customers, or the buying, selling, or trafficking in any such barrel, cask, keg, bottle, or box by any person other than the owner without such written permission; **or** the fact that any junk dealer, or dealers in casks, barrels, kegs, bottles, or boxes shall have in his **or** her **possession** any such cask, barrel, keg, bottle, or box so marked or stamped, and registered as aforesaid, without such written permission shall and is hereby declared to be **prima facie evidence that** such **use,** buying, selling, trafficking in, or having in possession any such cask, barrel, keg, box, or bottle **is unlawful** within the meaning of this act, and any person or persons found guilty of any such use, buying, selling, trafficking in, or having in possession any soda cask, barrel, keg, box, or bottle, without such written permission, shall be liable to be arrested and fined as provided in the second section of this act, and it is hereby declared to be the duty of any justice of the peace or police judge within this state, upon oath having been made in writing before him by any owner, or by the agent of any owner or owners, that any person has violated the provisions of this act, to immediately issue his warrant and cause such person or persons so accused to be brought before him and proceed to try such accused party as in cases of misdemeanor; and in case such accused party shall be found guilty of having violated any of the provisions of this act, shall assess the fine as provided in the second section of this act, such fine and costs to be collected as provided by law in other cases of misdemeanor.

5732. In case the owner or owners of any cask, barrel, keg, bottle, or box so marked, stamped, and registered as aforesaid, shall in person, or by agent, make oath in writing before any justice of the peace or police judge, that he has reason to believe, and does believe, that any manufacturer or bottler of soda, mineral water, or other beverage, or any other person is using in any manner by this act declared to be unlawful, any of the casks, barrels, kegs, bottles, or boxes of such person or his principal; or that any junk dealer or dealers in casks, barrels, kegs, bottles, or boxes, or any other dealer, manufacturer, or bottler has any such cask, barrel, keg, bottle, or box secreted in, about, or upon his, her, or their premises, the said justice of the peace or police judge shall issue his **search warrant** and cause the premises designated to be searched, as in other cases where search warrants are issued, as is now provided by law; and in case any such cask, barrel, keg, bottle, or box duly marked or stamped, and registered as aforesaid, shall be found in, upon, or about the premises so designated, the officer executing such search warrant shall thereupon **arrest** the person or persons named in such search warrant and bring him, her, or them before the justice of the peace or police judge who issued such warrant, who shall thereupon hear and determine such case, and if the accused is found guilty, he, she, or they shall be fined as provided in the second section of this act.

5733. All **costs** incurred in the enforcement of the provisions of this act shall be assessed and collected in the same manner as in criminal cases, and all fines collected by virtue of this act shall be turned over by the justice of the peace or police judge collecting the same, in the same manner, and for the same purpose, as fines in cases of misdemeanor are now by law disposed of.

5734 (141). If any person or persons shall obtain, cause to be obtained, or attempt to obtain from any life or accident insurance company any sum of money, on any policy of life or accident insurance issued by any company in this state, by falsely or fraudulently representing the person or persons insured as dead, or shall cause any person or persons to be insured under an assumed name, and shall falsely represent the fictitious person or persons so insured as dead, and shall thereby obtain, cause to be obtained, or attempt to obtain from such company the amount of such insurance, and shall falsely obtain, cause to be obtained, or attempt to obtain from any such life or accident insurance company any sum of money upon any life or accident policy of such company by means of false and fraudulent written representation or affidavits, falsely representing that the person whose life was insured was dead, or that the person insured against accident was injured, every person so offending, if the sum so obtained, attempted or caused to be obtained shall be equal to or exceed thirty-five dollars, shall be punished by imprisonment in the penitentiary not exceeding fifteen years; and if the sum so obtained, attempted or caused to be obtained shall be less than thirty-five dollars, shall be fined in any sum not more than five hundred dollars, or be imprisoned in the jail of the proper county not exceeding six months, or both, at the discretion of the court.

5735 (142). If any person shall subscribe or become a member of, or be in any way interested in any association or company for the purpose of issuing or putting in circulation any bill, check, ticket, certificate of deposit, promissory note, receipt, or other paper of any bank, to circulate as money in this state, without being authorized so to do under the laws of this state, or of the United States, he shall be punished by imprisonment in the penitentiary not more than one year, and by a fine of not more than one thousand dollars.

5736. (143). If any person, number of persons, or corporation, in this state, without special leave from the legislative assembly, or authority from the government of the United States, shall emit or utter any bill of credit, make, sign, draw, or endorse any bond, prommissory note, or writing, bill of exchange or order, to be used as a general circulating medium as or in lieu of money or other currency, every such person or persons, or members of such corporation, assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

5737 (144). Any county commissioners or persons employed by them, whose duty it shall be to superintend, in whole or in part, the erection of any court house, jail, infirmary, or bridge, or the addition to, alteration, or improvement of the same, or the making of the plans, description, and specifications of the labor to be performed and materials to be furnished, and the estimates of the cost thereof, or the estimates of the amount of labor done and materials furnished from time to time, under and in accordance with the terms and conditions of the contract to be made, who shall in the performance of such duty knowingly permit the work to be done in any other mode or manner than as prescribed in such plans, descriptions, and specifications, unless the same shall be done with the approval and consent of the officers to whom the plans, drawings, representations, bills of material, and specifications of work, and estimates of the cost thereof in detail and in the aggregate, are required to be submitted for approval, or with material different from that required by such bills of material, unless done with the consent and approval of said officers as aforesaid, or shall knowingly make false estimates of the labor done and material furnished in the quantity or price thereof, shall be fined in any sum not less than one hundred nor more than one thousand dollars, and shall be imprisoned in the county jail not less than three nor more than six months, and be liable to the county in which such misdemeanor may be committed for double the amount such county shall be damaged by reason thereof.

CHAPTER XVII.—FORGERY, COUNTERFEITING, ETC.

5738 (145). If any person shall falsely make, alter, **forge, counterfeit,** print, or photograph any record, or other authentic matter, of a public nature; or any license, or any certificate authorized by the laws of this state; or any charter, letters patent, deed, lease, writing obligatory, will, testament, annuity, bond, covenant, bank bill or note, check, draft, bill of exchange, contract or promissory note, for the payment of money or other property; or, any note, bond, coupons, stamps, postage, or fractional currency, or any security issued under authority of any act or acts of the Congress of the United States; or any acceptance of a bill of exchange; or the number of any principal sum of any accountable receipt for any note; or any order or any warrant or request for the payment of money, or the delivery of goods and chattels of any kind; or any acquittance or receipt, either for money or goods; or any acquittance, release, or discharge of any debt, account, action, suit, demand, or other thing, real or personal; or any plat, draft, or survey of land; or any transfer or assurance of money, stock, goods, chattels, or other property whatever; or any letter of attorney, or any other power to receive money, or to receive and transfer stock, or annuities; or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal; or any bills drawn by the auditor of public accounts, for the payment of money at the treasury; or any check, ticket, order, or pass, purporting to have been issued by any railroad company, or by any officer or officers thereof, or by any street railroad company, or owner, or by any toll bridge company, or owner; or any private stamp, brand, wrapper, label, or trade-mark, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman to or upon the goods, wares, merchandise, preparation, or mixture of such mechanic, manufacturer, druggist, merchant, or tradesman; or the seal of any public officer or office authorized or established in pursuance of the laws of this state, or of the United States, with intent to damage or defraud any person or persons, body politic or corporate, or any military body organized under the laws of this state; or shall utter or publish as true and genuine, or cause to be uttered or published as true and genuine, or shall have in his possession with intent to utter and publish as true and genuine, any of the above named false, altered, forged, counterfeited, falsely printed, or photographed matter, above specified and described, knowing the same to be false, altered, forged, counterfeited, falsely printed, or photographed, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, every person so offending shall be imprisoned in the penitentiary for any space of time not exceeding twenty years, nor less than one year, and pay a fine not exceeding five hundred dollars.

An illegal instrument cannot be the subject of forgery. **5**, 177. Offering to pass, declaring or asserting, even indirectly, that it is good, is uttering. 20, 287 (29 N. W., 923). When forged check is presented at bank by a stranger, and paid, and it afterward passes through several banks, held, that the first bank paying is liable. **22**, 774 (36 N. W., 289). Note alleged to have been forged was for $500 payable to W. H. five years from date, with interest at twelve per cent payable semi-annually. Note offered in evidence called for interest payable annually, was indorsed with name of payee, and two payments. Held, a variance between the allegation and the proof. **10**, 591 (7 N. W., 331).

5739 (146). If any person shall have in his possession any die or dies, plate or plates, brand or brands, engraving, imprint, printed labels, wrappers, or any other **instrument**, thing, or means whatever, with intent therewith or thereby to falsely make, **forge**, or counterfeit any matter specified in the last preceding section or to cause or enable the same to be done; or shall have in his **possession** any such falsely made, **forged**, or counterfeited **matter**, whether the same be completely or only partly executed, for the purpose of bartering, selling, or disposing thereof, knowing the same to be falsely made, forged, or counterfeited, with intent thereby to prejudice, damage, or defraud any person or persons, body politic or corporate, every person so offending shall be imprisoned in the penitentiary not less than six months, nor more than ten years, and pay a fine not exceeding one thousand dollars.

5740 (147). If any person shall sell, barter, or in any manner dispose of any false, **forged**, or counterfeited, **bank** note or **notes**; or shall barter, sell, or in any manner dispose of any counterfeit bank note or notes, the same not being filled up, or the signatures thereto forged or affixed, whether by single bill or by sheets; or shall sell, barter, or in any manner dispose of any bank note or notes, the same being filled up, but having the signatures of persons, not the officers of the bank from which such note or notes purport to have been issued, or having the names of fictitious persons thereto; or if any person shall be detected with any such spurious bank note or notes in his possession, for the purpose of selling, bartering, or disposing of the same; or if any person shall make, alter, publish, pass, or put in circulation, any note or notes, bill or bills, purporting to be the note or notes, bill or bills, of a bank, company, or association, which never did in fact exist, such person or persons, knowing at the time of publishing, passing, or putting in circulation, any such note or notes, bill or bills, that the bank, company, or association, purporting to have issued the same, never did exist, every person so offending shall be imprisoned in the penitentiary not more than fifteen years nor less than one year, and pay a fine not exceeding five hundred dollars.

5741 (148). If any person shall engrave any **plate for** striking or **printing** any false or **counterfeit** bank **notes**, knowing it to be designed for that purpose, or shall, knowingly, have in his **possession**, and secretly keep, any plate for the purpose aforesaid; and if any person shall engrave, cut, indent, or cause any piece or pieces of brass, copper, or any other metal, for striking, printing, or altering any of the writing, printing, or figures of any bank note or notes, bill or bills, knowing them to be designed for that purpose; or shall knowingly have in his possession, and secretly keep the same for the purpose aforesaid, every person so offending shall be imprisoned in the penitentiary not more than fifteen years, nor less than one year.

5742 (149). Any person who shall vend or keep for sale any **goods**, merchandise, mixture, or preparation upon which any forged or **counterfeit** stamps, **brands**, imprints, wrappers, labels, or trade marks be placed or **affixed**, and intended to represent the said goods, merchandise, mixture, or preparation as the true and genuine goods, merchandise, mixture, or preparation, of any person or persons, knowing the same to be counterfeit, shall be punished by a fine not exceeding one hundred dollars.

5743 (150). If any person shall **counterfeit** any of the **coins** of gold, silver, or copper, currently passing in this state, or shall alter, or put off counterfeit coin or coins, knowing them to be such, or shall make any **instrument for counterfeiting** any of the coins aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep, any instrument for the purpose of counterfeiting any of the coins aforesaid, every person so offending shall be imprisoned in the penitentiary not more than fifteen years nor less than one year, and pay a fine not less than one hundred nor greater than three hundred dollars.

5744 (151). If any person shall **gild** any of the silver **coins** currently passing in this state, or shall gild any other metal having the likeness and similitude of any of the coins currently passing in this state, so as to give it the appearance of any of the gold coins of the United States, or any other gold coins currently passing in this state, with intent to injure or defraud, or if any person shall pass, or put in circulation, any such false or gilded money, knowing that it is not genuine, the person so offending shall be imprisoned in the penitentiary not more than five years nor less than one year.

5745 (152). If any person, shall attempt to **pass** any base or **counterfeit** coin or **coins,** knowing them to be such, **or** shall attempt to pass any false, forged, and counterfeited **bank** note or **notes,** knowing them to be such, every person so offending shall be imprisoned in the penitentiary not more than five years nor less than one year, and pay a fine not exceeding five hundred dollars nor less than one hundred dollars.

5746 (153). If any person shall **sell,** barter, or in any manner dispose of any false, forged, or **counterfeit coin,** made in the likeness and similitude of any of the gold, silver, copper, or nickel coin or coins currently passing in this state, or if any person shall be detected with any such false, forged, or counterfeit coin or coins in his or her possession for the purpose of selling, bartering, or disposing of the same, knowing the same to be false, forged, or counterfeit, every person so offending shall be imprisoned in the penitentiary not more than ten years nor less than one year, and pay a fine not exceeding one hundred dollars.

5747 (154). If any person shall be detected with any false, forged, base, or **counterfeit coin** or coins, made in the similitude of any gold, silver, copper, or nickel coin or coins currently passing in this state, in his or her **possession,** for the purpose of uttering and publishing the same as true and genuine, knowing the same to be false, forged, base, or counterfeit, every such person shall be imprisoned in the penitentiary not more than ten years nor less than one year.

CHAPTER XVIII.—PERVERSION OF PUBLIC JUSTICE.

5748 (155). If any person, having taken a lawful oath, or made lawful affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, shall upon such oath or affirmation willfully and corruptly depose, affirm, or declare any matter to be fact, knowing the same to be false, or shall in like manner deny any matter to be fact, knowing the same to be true, every person so offending shall be deemed guilty of **perjury,** and shall be imprisoned in the penitentiary not more than fourteen years nor less than one year.

In order to convict, there must be, in addition to contradictory oath of one witness, at least corroborating facts and circumstances equal to testimony of another. **27,** 734 (43 N. W.,747; 44 N. W., 108). Sufficient to charge that the false testimony was material. **23,** 442 (40 N. W., 302).

5749 (156). If any person shall persuade, procure, or **suborn** any other person to commit wilful and corrupt **perjury,** every person so offending shall be imprisoned in the penitentiary not more than ten years nor less than one year.

5750 (157). If any judge, justice, sheriff, coroner, constable, jailor, or other **officer** of this state, either judicial or ministerial, shall knowingly ask, demand, or receive any **fee** or reward to execute or do his duty, **other than** is or shall be **allowed** by the laws of this state, every person so offending shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the jail of the county not exceeding ten days, or both, at the discretion of the court.

5751 (158). If any person shall take upon himself to **exercise** or **officiate** in any other office or place of authority, in this state, **without being** legally **authorized,** the person so offending shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the jail of the county, and be fed on bread **and** water only, not exceeding ten days, or both, at the discretion of the court.

5752 (159). If any judge, justice of the peace, clerk of any court, sheriff, coroner, constable, attorney, or counselor at law shall encourage, **excite,** and stir up any **suit,** quarrel, **or controversy** between two or more persons, with intent to injure such person or persons, such judge, justice of the peace, clerk, sheriff, constable, attorney, or counsellor at law shall be fined in any sum not exceeding five hundred dollars, and shall be answerable to the party injured in treble damages.

5753 (160). If any sheriff, coroner, constable, jailer, clerk, county recorder, county clerk, county treasurer, or assessor, **by color of** or in the execution of his **office,** shall designedly, willfully, or corruptly injure, defraud, or **oppress** any person, or shall attempt to defraud, injure, or oppress any person, such sheriff, coroner, constable, jailer, clerk, county recorder, county clerk, county treasurer, or assessor shall, on conviction thereof, be fined in any sum not exceeding two hundred dollars, and be answerable to the party so injured, defrauded or oppressed, in treble damages.

5754 (161). If any **person,** having been **called upon by** the sheriff, or other ministerial **officer,** in any county in this state, to assist such sheriff or other officer in apprehending any person charged with, or convicted of, any offense against any of the laws of this state, or in securing such offender when apprehended, or in conveying such offender to the jail of the county, shall neglect or **refuse** to render such **assistance,** every person so offending shall be fined in any sum not exceeding fifty dollars.

5755 (162). If any sheriff, coroner, jailer, or other person whatsoever, having any offendor in custody, charged with, or convicted of, any offense made punishable by the laws of this state, shall voluntarialy **suffer** such **offender to escape** and go at large, every sheriff, coroner, jailer, or other person so offending, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned not exceeding ten days, or both, at the discretion of the court.

5756 (163). If any person shall aid or **assist** any **prisoner,** confined in any jail, or other place of confinement, charged with, or convicted of, any offense against the laws of this state, **to** make his or her **escape** from such jail or place of confinement, although no escape be actually made, every person so offending shall be fined not more than five hundred nor less than fifty dollars, or be imprisoned in the jail of the county not exceeding thirty days, or both, at the discretion of the court.

5757 (164). If any person shall attempt to **corrupt** or influence any **juror or witness,** either by promises, threats, letters, money, or other undue means, either directly or indirectly, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the jail of the county not exceeding thirty days.

Indictment will lie for corrupting witness before subpœnaed; allegations of. **18, 109** (24 N. W., 434).

5758 (165). If any **juror or witness** shall **corruptly** take and **receive** any money, goods, chattels, or other **reward,** either directly or indirectly, in any action or suit instituted before any court having jurisdiction thereof, such juror or witness so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the jail of the county not exceeding thirty days.

5759 (166). If any person shall by **bribery,** persuasion, seduction, or any other arts or means whatever, attempt **to prevail upon** any ministerial **officer,** or other person charged with the safe keeping of any person accused or convicted of any offense against the laws of the state, **to permit** such person to **escape** from the custody of such officer or other person, every person so offending shall be fined in any sum not more than five hundred nor less than twenty-five dollars.

5760 (167). If any sheriff or jailer, or any other person having the care **and** custody of any **jail,** shall suffer the same to become foul and **unclean,** so that the health of any prisoner may be endangered, such sheriff, jailor, or other person shall be fined in any sum not exceeding one hundred dollars.

5761 (168). When any warrant legally issued by any magistrate of the state, in any **criminal case,** shall be delivered into the hands of any constable or other officer, to be executed, whose duty it shall be to execute such warrant, it is hereby made the duty of such constable or other officer to serve the same immediately, and if such constable or other officer shall **neglect** or delay **to serve** any such **warrant,** delivered to him as aforesaid, when in his power to serve the same, either alone or by calling upon assistance according to law, such constable or other officer shall, if the offense charged for which the warrant issued be a felony, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail ten days, or both, at the discretion of the court.

5762 (169). **[Neglect in misdemeanors.]**—If any constable or other officer shall be guilty as specified in the preceding section, of neglect or delay in serving any warrant, when the offense charged, for which such warrant may issue, be an offense not punishable by death or imprisonment in the penitentiary, such constable or other officer shall be fined in any sum not exceeding one hundred dollars, or imprisoned not exceeding ten days, or both, at the discretion of the court.

5763 (170). A **conviction** of any officer of either of the offenses specified in the two last preceding sections, shall be a **forfeiture of** his **office,** and the same shall immediately become vacant.

There is no sec. 171 in the original act.

5764 (172). If any sheriff or jailer, or any other person, having the care and custody of any jail, shall suffer any person sentenced to **imprisonment** therein for any offense, to be dealt with in a manner **less severe than** is **required** by law, such sheriff or jailer shall be fined in any sum not exceeding one hundred dollars.

5765 (173). If any person or persons shall set at liberty or **rescue** any person who shall have been found guilty or convicted of a crime, the punishment of which is death, or shall aid in the escape of such **convict,** such person shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteeen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in the custody of an officer or in the penitentiary, or shall aid in the escape of such convict, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

5766 (174). Every person who shall convey into a state prison, jail, or other place of confinement, any **disguise, instrument,** arms, or other things proper or useful to aid any prisoner in his escape, with intent thereby **to facilitate** the **escape** of any prisoner committed to or detained in such prison, jail, or place of confinement, charged with, or convicted of any offense against the laws of this state, or the United States, whether such escape be effected or attempted, or not, shall be fined not more than five hundred, nor less than fifty dollars, or be imprisoned in the jail not exceeding three months, or both, at the discretion of the court.

5767 (175). If any person shall, directly or indirectly, give any sum or sums of money, or any other **bribe,** present, or reward, or any promise, contract, obligation, or security for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, member of the legislative assembly, or other officer, ministerial or judicial, but such fees as are allowed by law, with intent to induce or influence such officer to appoint or vote for any person for office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed or voted for any person for any office, or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law, the person so **giving, and** the officer so **receiving,** any money, bribe, present, reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and shall be punished by confinement in the penitentiary not less than one year nor more than five years.

See **16,** 672 (21 **N. W.,** 455).

5768 (176). Every person who shall offer or **attempt to bribe** any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, or other ministerial or judicial officer in any of the cases mentioned in the last preceding section, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, prosecuting attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in the said preceding section, shall be fined in a sum not exceeding five hundred dollars, nor less than three hundred dollars.

5769 (177). If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to **compound** any criminal **offense,** such person shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

5770 (178). If any two or more persons shall **conspire** or agree, falsely and maliciously, **to charge** or indict, or cause or procure to be charged or indicted, any person for any criminal offense, each of the persons so offending shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

5771 (179). If any person shall willfully and maliciously alter, deface, **mutilate,** destroy, abstract, or conceal, any **record** or part thereof, authorized to be made by any law of this state, of or pertaining to any court, justice of the peace, or any state, county, district, or municipal office or officer, or any other public record so authorized, or any paper or writing duly filed with, in, or by any such court, justice of the peace, office, or officer, every such person shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding three hundred dollars, or be imprisoned in the county jail not exceeding three months, or both, at the discretion of the court.

5772 (180). Any magistrate, clerk of the court, sheriff, constable, or other officer mentioned in chapter fifty of this code, who shall **neglect** or refuse to perform any duty required **of** such **officer** by any provision of said chapter fifty, or any clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, prosecuting or district attorney, or any ministerial officer, who may be guilty of any palpable omission of duty, or who shall willfully or corruptly be guilty of **malfeasance** or partiality in the discharge of his official duties, shall be fined in a sum not exceeding two hundred dollars, and the court shall have power to add to the judgment that any officer so convicted shall be removed from office; *Provided,* That the removal of a clerk of the district court from office shall not remove such officer from the office of the county clerk, but in such case the judge shall have power to appoint such clerk of the district court until the next general election of county officers. The court shall have power, whenever any clerk of the district or supreme court, or the district or prosecuting attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk or prosecuting attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

CHAPTER XIX.—Offenses Against Election Laws.

5773 (181). The provisions of this chapter shall apply to all elections authorized by the laws of this state.

5774 (182). Any person who shall vote in any precinct, or in any ward of a city in this state, in which he has not actually resided ten days, or such length of time required by law, next preceding the election, or into which he shall have come for temporary purposes merely, shall be fined in any sum not exceeding five hundred dollars nor less than fifty dollars, and be imprisoned in the jail of the proper county not more than six months.

5775 (183). Any person being a resident of this state who shall go or come into any county, and vote in such county, not being an actual resident thereof for forty days next preceding the election, or for such time as may at the time be required by law, shall, on conviction thereof, be imprisoned in the penitentiary not more than three years.

5776 (184). Any person who shall vote more than once at the same election shall be imprisoned in the penitentiary not more than five years nor less than one year.

5777 (185). Any resident of another state who shall vote in this state shall, on conviction thereof, be imprisoned in the penitentiary not more than five years.

5778 (186). Any person who shall vote who shall not have been a resident of this state for six months, or such time as required by law, immediately preceding the election, or who, at the time of the election, is not twenty-one years of age, knowing that he is not twenty-one years of age, or who is not a citizen of the United States, and has not filed his declaration to become such according to the laws of the United States, knowing that he is not such citizen, and that he has not filed such declaration, or who, being disqualified by law, by reason of his conviction of some infamous crime, shall not have been pardoned and restored to all the rights of a citizen, shall be imprisoned in the county jail of the proper county not more than six months.

5779 (187). Any person who shall procure, aid, or assist, counsel, or advise another to give his vote, knowing that such other person has not been a resident of this state six months, or such time as required by law, immediately preceding the election, or that, at the time of the election, he is not twenty-one years of age, or that he is not a citizen of the United States, and that he has made no declaration according to law to become such citizen; or that he is not duly qualified from other disability to vote at the palace where, and the time when the vote is to be given, shall be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not more than six months.

5780 (188). Any person who shall procure, aid, assist, counsel, or advise another to go or come into any county, for the purpose of giving his vote in such county, knowing that the person is not duly qualified to vote in such county, shall be imprisoned in the penitentiary not more than five years nor less than one year.

5781 (189). Any person who shall, by **bribery**, attempt to influence any elector of this state in giving his vote or ballot, or who shall use any **threat to procure** any elector to **vote** contrary to the inclination of such elector, or to deter him from giving his vote or ballot, shall be fined in any sum not exceeding five hundred dollars, and be imprisoned in the county jail not more than six months.

5782 (190). Any person who shall furnish an **elector who cannot read** with a ticket, **informing** him that it contains a name or names different from those which are written or printed thereon, with an intent to induce him to vote contrary to his inclination; or who shall fraudulently or **deceitfully** change a ballot of any elector, by which such elector shall be prevented from voting for such candidate or candidates as he intended, shall be imprisoned in the penitentiary not more than three years.

5783 (191). If any **judge of** the **election** shall knowingly receive or sanction the reception of a vote from any person not having all the qualifications of an elector prescribed by the laws of this state; or shall receive or sanction the reception of a ballot from any person who shall refuse to answer any question which shall be put to him in accordance with the requirements of the laws of this state; or who shall refuse to take the oath prescribed by the laws of this state; or shall refuse or sanction the refusal by any other judge of the board to which he shall belong to administer any oath or affirmation required by the laws of this state, and in such case required to be administered; or if any judge of the election shall refuse to receive or shall sanction the rejection of a ballot from any person, knowing him to have the qualifications of an elector under the provisions of the laws of this state, at the place where such elector offers to vote, or if any judge or clerk of the election, on whom any **duty** is enjoined by the laws of this state, shall be guilty of any willful **neglect of** any such duty, or of any corrupt conduct in the execution of the same; such judge or clerk shall be fined in any sum not more than one thousand dollars nor less than three hundred dollars, and be imprisoned in the jail of the county not more than six months nor less than three months; *Provided,* That so much of the provisions of this section as may be superseded by any registration laws in force, shall not be operative where such laws are in force.

5784 (192). Any person or persons who shall, either before or after proclamation is made of the opening of the polls, **fraudulently put a ballot** or ticket into the ballot-box, shall be imprisoned in the penitentiary not more than three years nor less than one year.

5785 (193). Any judge or **judges** of the election who shall, after proclamation made of the opening of the polls, put a ballot or ticket into the ballot-box, except his or their own ballot or ticket, or such as may be received in the regular discharge of his or their duties as such judge or judges, or who shall knowingly permit any **ballot** or ticket, **fraudulently** placed or **deposited** in such ballot-box by any other person or persons, to remain therein, or be counted with the legal votes cast at such election, shall be imprisoned in the penitentiary not more than three years nor less than one year.

5786 (194). Any judge or clerk of any election under the laws of this state, or any other person or persons who shall at any time willfully, knowingly, and with **fraudulent** intent, inscribe, write, or cause to be inscribed or written, in or upon any **poll-book,** tally-sheet, **tally-list,** in or upon any book or paper purporting to be such, or upon any election **returns** under the laws of this state, or upon any book or paper containing the same, the name or names of any person or persons not entitled to vote at such election, or not voting thereat, or any fictitious name, with intent to defeat, hinder, or prevent a fair expression of the will of the people at such election, shall be imprisoned in the penitentiary not more than three years nor less than one year.

5787 (195). Any person or persons who shall, at any time, have in his or their **possession** any falsely made, altered, forged, or counterfeited poll book, tally sheet, tally list, or election returns of any election under the laws of this state, knowing the same to be falsely made, altered, forged, or counterfeited, with intent to hinder, defeat, or prevent a fair expression of the popular will at any such election, shall be imprisoned in the penitentiary not more than three years nor less than one year.

5788 (196). If any person or persons, at any election held by virtue of any laws of this state, in any ward of any city, or in any village or election precinct in any county of this state, shall unlawfully, either by force, violence, fraud, or other improper means, **obtain possession of** any **ballot-box or** any ballot or **ballots** therein deposited, while the voting at such election is going on, or before the ballots shall have been duly taken out of such ballot-box by the judges of election according to law, such person or persons shall be imprisoned in the penitentiary not more than three nor less than one year, at the discretion of the court.

5789 (197). If any person or persons shall unlawfully **destroy** any **ballot-box** used, any **ballot** or vote deposited, any **poll book** kept at any election held by virtue of any law of this state, such person or persons shall be imprisoned in the penitentiary not less than one nor more than five years, at the discretion of the court.

5790 (198). If any person or persons, at any election held by virtue of any law of this state, in any ward of any city, or in any village or election precinct of any county in this state, shall unlawfully, either by force, violence, fraud, or other improper means, attempt to **obtain possession of** any ballot-box, or any ballot or ballots therein deposited, **while** the **voting** at such election **is going on,** or before the ballots shall all have been duly taken out of such ballot-box by the judges of such election, according to law; **or** if any person or persons shall unlawfully **attempt to destroy** any **ballot-box** used, any **ballot** or vote deposited, any **poll book** kept at any election held by virtue of any law of this state, such person or persons shall be imprisoned in the penitentiary not less than one nor more than three years, at the discretion of the court.

5791 (199). It shall be **unlawful** for any person in this state **to sell** or give away, or dispose of with intent to evade the law, any intoxicating **liquors on** the **day of** any general or special **election.** Any person offending against this section shall be guilty of a misdemeanor and be punished by fine not less than twenty-five dollars nor exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment.

CHAPTER XX.—Offenses Against Marriage and the Relation of Sex.

5792 (200). If any male person, seventeen years old and upward, shall have **carnal knowledge of** any **woman,** other than his wife, such woman being **insane,** he knowing her to be such, every person so offending shall be imprisoned in the penitentiary not more than ten nor less than three years.

5793 (201). [**Bigamy.**]—That if any married person, having a husband or wife living, shall marry any other person, every person so offending shall be imprisoned in the penitentiary not more than seven years nor less than one year. But nothing contained in this section shall be construed to extend to any person whose husband or wife shall be continually and willfully absent for the space of five years together and unheard from, next before the time of such marriage.

5794 (202). **Marriages** between parents and children, including grand parents and grand children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be **incestuous** and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

5795 (203). **Persons within** the **degrees of consanguinity** within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or shall lewdly and **lasciviously cohabit** with each other, shall be liable to indictment, and upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

Not necessary that both parties should be indicted. **21**, 173 (31 N. W., 669). Held, not necessary to hold themselves out as husband and wife. Sexual cohabitation sufficient. **19**, 310 (27 N. W., 126).

5796 (204). If a **father** shall rudely or licentiously **cohabit with** his own **daughter,** the father shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

5797 (205). If any person of the age of fourteen years and upward shall willfully make an **indecent exposure** of his or her person in any street, lane, alley, or other place, in any city, town, village, or county, or shall utter, speak, or use any obscene or lascivious language or words in the presence or hearing of any female, the person so offending shall be fined in any sum not exceeding five dollars, or be imprisoned in the cell or dungeon of the jail of the county not exceeding ten days, or both, at the discretion of the court.

Sec. 206 repealed 1887, p. 674. See secs. 5859 to 5864, *post.*

5798 (207). Any person over the age of eighteen, who, under **promise of marriage,** shall have illicit **carnal intercourse** with any female of good repute for chastity, under the age of eighteen years, shall be deemed guilty of seduction, and upon conviction, shall be imprisoned in the penitentiary not more than five years, or be imprisoned in the county jail not exceeding six months, but in such case the evidence of the female must be corroborated to the extent required as to the principal witness in cases of perjury.

5799 (208). If any married woman shall hereafter commit **adultery,** or desert her husband and live and cohabit with another man in a state of adultery, she shall, upon conviction thereof, be imprisoned in the jail of the county not exceeding one year; and if any married man shall hereafter commit adultery, or desert his wife and live and cohabit with another woman in a state of adultery, or if any married man living with his wife shall keep any other woman and wantonly cohabit with her in a state of adultery, or if any unmarried man shall live and cohabit with a marrried woman in a state of adultery, every person so offending shall be fined in any sum not exceeding two hundred dollars, and be imprisoned in the jail of the county not exceeding one year.

Amended 1875, p. 11. Indictment must be substantially as in the statute; wife is competent witness. **17**, 528 (23 N. W. 507). Undue familiarity before and after admissible as evidence. **5**, 288.

5800 (209). If any unmarried persons shall **live** and cohabit together, **in a state of fornication,** such persons so offending shall each be fined in any sum not exceeding one hundred dollars, and be imprisoned in the county jail not exceeding six months.

5801 (210). Every house or **building** situated in this state, used and **occupied as a house of ill-fame,** or for the purposes of prostitution, shall be held and deemed a public nuisance; and any person owning, or having the control of, as guardian, lessee, or otherwise, such house or building, and knowingly **leasing** or subletting the same in whole or in part, for the purpose of keeping therein a house of ill-fame, knowingly, or permit the same to be used or occupied for such purpose, or using or occupying the same for such purpose, shall for every such offense be fined in any sum not exceeding one hundred dollars, or imprisoned not less than thirty days, nor more than six months, or both, at the discretion of the court.

What necessary to warrant conviction. 14, 536 (17 N. W., 117).

5802 (211). The **use** or occupation **by** the **lessee** or tenant of any house or building, or any part thereof, for the purposes prohibited in the preceding section, shall be held by the courts of this state good cause on the part of the owner or lessor to **avoid** the agreement of **lease** or renting, and to re-enter at any time and take possession of such house or **building**.

5803 (212). If any person or persons shall **induce**, decoy, entice, hire, engage, employ, or compel any female under eighteen years of age; or if any person or persons shall cause, by compulsion or otherwise, any female over eighteen years of age, against her will, to have **illicit** carnal **intercourse** with any person other than the person so inducing, decoying, enticing, hiring, engaging, employing, or causing such female to have such illicit carnal intercourse; or if any person **or** persons shall knowingly **permit** or allow any other person to have illicit intercourse with any female of good repute for chastity, **at** the house, **residence**, or upon the premises owned or controlled by such person, the person or persons so offending shall be imprisoned in the penitentiary for not more than five years.

Secs. 5804 to 5808. "An act to prohibit the keeping, maintaining, or harboring of girls under the age of eighteen (18) years and boys under the age of twenty-one (21) years in houses of ill fame, and to authorize any officer of the law, or the officers or agents of the Nebraska Humane Society, and all other humane or charitable societies, to compel their removal from such houses." 1891, p. 264. In force April 1.

5804. That it shall be unlawful for any person or persons to allow, keep, maintain, or **harbor** any **girl under eighteen** (18) years of age, **or** any **boy under twenty-one** (21) years of age **in** any **house of ill-fame** or any house of bad repute, and any person found guilty of violating any of the provisions of this act shall be deemed guilty of misdemeanor and, on conviction thereof, shall be fined in any sum not exceeding one hundred ($100.00) dollars, nor less than twenty-five ($25.00) dollars, or be imprisoned in the county jail not more than thirty (30) days, and shall stand committed until such fine and costs are paid.

5805. It shall be lawful for any sheriff, constable, chief of police, or any policeman, or city marshal, or any **officer** or agent of the Nebraska Humane Society, or any other humane or charitable society, to **enter** any house of ill fame **to search** for any such children allowed, kept, maintained, or harbored therein, and to institute and maintain **proceedings** in *habeas corpus* to remove such children from such houses of ill fame or bad repute, and it shall only be necessary to prove that such house from whence it is sought to remove such children is by common repute a house of ill fame, or of notoriously bad repute, or kept and run for the purpose of prostitution, to establish the unlawful detention, and depriving such children of their liberty.

5806. The **county judges** in their respective counties shall have **jurisdiction** in such cases as in *habeas corpus*, and upon proof being made, as provided in section two (2) of this act, may, in their discretion, order such children removed from said houses of ill fame, or bad repute, and placed in charge of any of the above named societies, or with such discreet person or persons as may desire to take them until suitable permanent homes may be provided for them, or until such children may be permanently adopted, which the said judges in their discretion may order.

5807. All **costs** and expenses **of removing** such **children** from such houses of ill fame or bad repute shall be adjudged and taxed against the party seeking to restrain said children and keep them in such houses of ill fame or bad repute, to be recovered as costs in civil cases.

5808. Nothing in this act shall be so construed as to relieve or release from **liability of** maintaining such children, any **parents** or persons charged with the support of such children after they have been removed by legal process from any houses of ill fame or bad repute, and placed with other families or societies or persons. And all such persons, whether parents or others, who have been held and bound for the support and maintenance of such children, shall be held and bound for their support and maintenance after any such removal, and until such children have been placed in permanent homes with some person or society, which shall voluntarily assume their support and maintenance and education. The amount of said support and maintenance to be fixed by the county judge having jurisdiction, and to be recovered in a civil action, and to be paid to the person, or society, having in charge said child or children.

CHAPTER XXI.—GAMING, BETTING, AND LOTTERIES.

5809 (213). This **chapter** of the criminal code shall be **given** in charge **to** the **grand jury** at each regular term of the district court by the judge thereof, and the district court shall have concurrent jurisdiction of any offense in this chapter.

Rewritten 1875, p. 11.

5810 (214). Every person who shall play at any game whatever for any sum of money or other property of value, or shall bet any money or property upon any **gaming** table, bank, or device, prohibited by law, or at or upon any other gambling device, or who shall bet upon any game played at or by means of any such gaming table, or gambling device, shall, upon conviction, be fined in any sum not less than one hundred dollars, and not exceeding three hundred dollars, or be imprisoned in the penitentiary not more than one year, and upon a second or any subsequent conviction shall be fined in any sum not less than three hundred dollars and not exceeding five hundred dollars, or be imprisoned in the penitentiary not more than two years; *Provided*, That if any person or persons who shall lose any property or money in a gambling house or other place, either at cards or by means of any other gambling device or game of hazard of any kind, such person, the wife or guardian of such, his heirs, legal representatives, or creditors, shall have the right to recover the money or the amount thereof, or the property or the value thereof, in a civil action, and may sue each or all the persons participating in the game, and may join the keeper of the gambling house or other place in the same action, who shall be jointly and severally liable for any money or property lost in any game or through any gambling device of any kind, and no title shall pass to said property or money, and in an action to recover the same no evidence shall be required as to the specific kind or denomination of money, but only as to the amount so lost.

Amended 1875, p. 11; 1887, p. 665. Constitutional. **25**, 830 (41 N. W., 799). Does not apply to stakeholder who has taken no part in the illegal transaction. **19**, 505 (27 N. W., 721); **29**, 814 (46 N. W., 161).

5811 (215). Every person who shall set up or **keep** any gaming table, faro bank, keno, or any kind of **gambling** table or gambling **device,** or gaming machine of any kind or description, under any denomination or name whatsoever, adapted, devised, and designed for the purpose of playing any game of chance for money or property, except billiard tables, or who shall keep any billiard table for the purpose of betting or gambling, or shall allow the same to be used for such purpose, shall, upon conviction, be punished by fine of not less than three hundred dollars, and not exceeding five hundred dollars, or to be imprisoned in the penitentiary not exceeding two years.

Amended 1875, p. 12; 1887, p. 666.

5812 (216). If any person or persons shall suffer any game or games whatsoever to be played for gain upon or by means of any gaming device or machine of any denomination or name, in his or their house, or any out-house, booth, arbor, or erection, of which he, she, or they have the care or possession, the person or persons so offending shall each pay a fine of not less than fifty nor more than one hundred dollars.

Amended 1875, p. 12.

5813 (217). If any keeper or keepers of any tavern, ordinary, or other house of public resort, shall suffer any game or games whatsoever, except games of athletic exercises, to be played at or within such tavern, ordinary, or house of public resort, or in any out-house, building, or erection appendant thereto, every such keeper or keepers shall pay a fine of not less than fifty nor more than one hundred dollars.

Amended 1875, p. 13.

5814 (218). If any person shall keep a room, building, arbor, booth, shed, or tenement, canal boat, or other water craft to be used or occupied for gambling, or if any person, being the owner of any room, building, arbor, booth, shed, or tenement, canal boat, or other water craft, shall rent the same to be used or occupied for gambling, the person so offending shall be fined in any sum not less than thirty nor more than one hundred dollars, or be imprisoned in the county jail not less than ten nor more than thirty [days], or both, at the discretion of the court; and if the owner of any room, building, arbor, booth, shed, or tenement, canal boat, or water craft, shall know that any gaming tables, apparatus, or establishment is kept or used in such room, building, arbor, booth, shed, or tenement, canal boat, or other water craft, for gambling, winning, betting, or gaining money or other property, and shall not forthwith cause complaint to be made against [the] person so keeping any such room, building, arbor, booth, shed, or tenement, canal boat, or other water craft, he shall be taken, held, and considered to have knowingly permitted the same to be used and occupied for gambling.

Amended 1875, p. 13.

5815 (219). If any person shall keep or exhibit any gaming table, establishment, device, or apparatus, to win or gain money or other property of value, or shall aid, or assist, or permit others to do the same, or of [if] any person shall engage in gambling for a livelihood, or shall be without any fixed residence, and in the habit or practice of gambling, he shall be deemed and taken to be a common gambler, and shall be imprisoned in the county jail not less than one nor more than three months, and be fined in any sum not exceeding one hundred dollars.

Amended 1875, p. 14.

5816 (220). If any person shall, by any device or pretense, entice or tempt, and prevail upon, or cause any minor to engage with such person, or any other person or persons, in any game whatsoever for any sum of money or property of value, or shall make any bet or wager with such minor, or shall cause it to be done, upon the results of any game, every such person shall be fined in any sum not less than fifty dollars nor more than one hundred dollars, or be imprisoned in the county jail not less [than] one month nor more than three months.

Penalty reduced, 1875, p. 14.

5817 (221). If any **keeper of** a **public house,** or retailer of spirituous liquors, in this state, shall establish, keep, or permit to be kept upon his or their lots or premises any **ball or nine-pin alley,** or shall in whole or in part be interested in any ball or nine-pin alley upon the lot or premises of another, he or they shall pay a fine of not less than ten nor more than one hundred dollars; and this section shall be construed to extend to any alley denominated to be a nine-pin alley, whether such alley is used for playing therein a greater or less number than nine pins.

5818 (222). If any owner or keeper of a **billiard saloon,** or any **owner** or keeper of a billiard table, at any grocery, or other public place, shall **permit** or suffer any **minor** under the age of eighteen years **to play** at any game of billiards in such grocery, saloon, or public place, or upon such billiard table, or to remain or to be in or upon the premises so occupied by him as such billiard saloon, or in which shall be such billiard table as aforesaid, every such person or persons shall forfeit and pay a fine of twenty dollars for the first offense, and fifty dollars for each and every succeeding offense.

5819 (223). If any person shall make any bet or wager **upon** the event of any **election** held, or to be held, under the laws of this state, or shall make any bet or **wager** upon the election of any person to any office, post, or situation which by the constitution or laws of this state is made elective, or shall make any bet or wager upon the election of the president or vice president of the United States, or upon the election of electors of president or vice president of the United States, each person so offending shall be fined in any sum not less than five dollars nor more than one hundred dollars; *Provided*, That the amount of said [fine] shall, [in] all cases in which the amount hazarded by said bet is between five dollars and one hundred dollars, be equal to the amount so hazarded by said bet.

Maximum reduced from $500, 1875, p. 14.

5820 (224). If any person shall open, set on foot, carry on, promote, make, or draw, publicly, or privately, any **lottery,** or scheme of chance, of any kind or description, by whatever name, style, or title the same may be denominated or known; or if any person shall by such ways and means expose or set to sale any house or houses, lands or real estate, or any goods or chattels, cash, or written evidences of debt, or certificates of claims, or any thing or things of value whatever, every person so offending shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court.

5821 (225). If any person or persons shall vend, **sell,** barter, or dispose of any **lottery ticket** or tickets, order or orders, device or devices, of any kind, for or representing any number of shares, or any interest in any lottery, or scheme of chance, or shall open, or establish, as owner, or otherwise, any lottery, or scheme of chance, in this state, or shall be in anywise **concerned in** any **lottery** or scheme of chance, by acting as owner or agent in this state for or on behalf of any lottery or scheme of chance to be drawn, paid, or carried on, either out of or within this state, every such person shall be fined in any sum not exceeding five hundred dollars, or be imprisoned not exceeding six months, or both, at the discretion of the court.

5822 (226). That if any person shall, by printing, writing, or in any other way **publish** an account of any **lottery** or scheme of chance of any kind or description to be carried on, held, or drawn in the state of Nebraska, by whatever name, style or title the same may be denominated, or known, stating when and where the same is to be drawn, on the prizes therein, or any of them, or the price of a ticket, or show therein, or where any ticket may be obtained, or in any way aiding or assisting in the same, or in anywise giving publicity to such lottery or scheme of chance, shall be subjected to a fine not exceeding one hundred dollars, at the discretion of the court.

Amended 1875, p. 15.

CHAPTER XXII.—OFFENSES AGAINST PUBLIC HEALTH AND SAFETY.

5823 (227). If any butcher or other person shall knowingly **sell** any **unwholesome** flesh of a deceased animal, or other unwholesome provision, he or she shall be fined in any sum not exceeding fifty dollars.

5824 (228). If any person shall build, erect, continue, or keep up any dam, or other obstruction, in any river or stream of water in this state, and thereby raise an artificial pond, or produce **stagnant waters,** which shall be manifestly injurious to the public health and safety, every person so offending shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court; and the court shall, moreover, order every such nuisance to be abated or removed.

5825 (229). If any person or persons shall put any dead animal, carcass or part thereof, or other **filthy substance,** into any **well,** or into any spring, brook, or branch of **running water,** of which use is made for domestic purposes, every person so offending shall be fined in any sum not less than two nor more than forty dollars.

5826 (230). If any person or persons shall put the carcass of any dead animal, or the offals from any slaughter house or butcher's establishment, packing house, or fish house, or any spoiled meats, or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, **public ground,** market space, or common, or if the owner or owners, occupant or occupants thereof shall knowingly permit the same to remain in any of the aforesaid situations, to the annoyance of the citizens of this state, or any of them, or shall neglect or refuse to remove or abate the **nuisance** occasioned thereby, within twenty-four hours after knowing of the existence of such nuisance upon any of the above described premises owned or occupied by him, her, or them, or after notice thereof in writing from the street commissioner, surpervisor, constable, any trustee, or health officer of any city or precinct in which such nuisance shall exist, every such person shall be fined in any sum not less than one or more than fifty dollars. And if said nuisance be not abated within twenty-four hours thereafter, it shall be deemed a second offense against the provisions of this section, and every like neglect of each twenty-four hours thereafter shall be considered an additional offense against the provisions of this section.

5827 (231). If any owner or owners, lessee or lessees, occupier or occupiers, foreman or superintendent of any distillery in this state who shall keep any hogs or other animals shall suffer or permit such **distillery,** or the place or places where such hogs or animals shall be kept, to remain **unclean** between the first day of April and the first day of October of any year, to the annoyance of the citizens of this state, or any of them, every person so offending shall pay for such offense a fine not less than five dollars nor more than fifty dollars. And if such nuisance be not removed and abated within five days after the institution of the prosecution, the continuance of such nuisance shall be deemed a second offense against the provisions of this section; and every like neglect of each succeeding period of five days shall be considered an additional offense against the provisions of this section.

Sec. 5828. "An act to prevent the introduction and spread of hog cholera and kindred diseases in the state of Nebraska." 1877, p. 149. In force June 1.

5828. That from and after the first day of June, A. D. 1877, it shall be unlawful for any **railroad** company operating its road in this state to bring or cause to be brought into this state from an adjoining state any empty car used for transporting hogs or sheep, or any empty combination car used for carrying grain and stock that has any filth of any kind whatever in the same; but the said railroad company shall, before it allows said car or cars to pass into this state, cause the same to be thoroughly cleaned and cleansed. Any person or persons or corporation violating any of the above provisions, and on conviction thereof, shall be fined in any sum not to exceed one hundred dollars.

5829 (232). Every person who shall erect, keep up, or continue and maintain any nuisance to the injury of any part of the citizens of this state shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court, and the court shall, moreover, in case of conviction of such offense, order such nuisance to be abated or removed. And the erecting, continuing, using, or maintaining any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalations, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing, or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure any water-course, stream, or water; or unlawfully diverting any such water-course from its natural course or state to the injury or prejudice of others; and the obstructing or incumbering by fences, buildings, structures, or otherwise, any of the public highways, or streets or alleys of any city or village, shall be deemed nuisances; and every person or persons guilty of erecting, continuing, using, or maintaining, or causing any such nuisances shall be guilty of a violation of this section, and in every such case the offense shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby.

Pollution of a stream may be enjoined. 28, 357 (44 N. W., 454).

5830 (233). That it shall be unlawful to catch any fish for the purpose of selling and packing the same for market, in this state, at any time between the first day of June and the first day of September; *Provided*, That should it be impracticable to take up or remove any stationary nets on the first of June, it shall be lawful for the owner or the person having such nets in charge to take up and remove the same at the earliest practicable day thereafter, and all fish therein at the time may be lawfully taken out, salted, and packed for market; but no more than one haul shall be taken from any net between the first day of June and the first day of September; and any person violating the provisions [of] this section shall pay for every such offense a fine of not less than fifty nor more than one hundred dollars.

Maximum reduced from $200, 1875, p. 15.

5831 (234). Whoever shall knowingly sell to any person or persons, or sell, deliver, or bring to be manufactured to any cheese or butter manufactory in this state any milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk," or shall keep back any part of the milk known as "strippings," with intent to defraud, or shall knowingly sell the product of a diseased animal or animals, or shall knowingly use any poisonous or deleterious material in the manufacture of cheese or butter, shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and be liable in double the amount of damages to the person or persons upon whom such fraud shall be committed.

Sec. 5832. "An act to protect butter and cheese manufacturers." 1883, p. 238. In force February 24.

5832. Whoever shall knowingly sell or supply or bring to be manufactured to any cheese manufactory, butter manufactory, or creamery in this state any milk diluted with water or in any way **adulterated**, or milk from which any cream has been taken, or milk commonly known as "**skimmed** milk;" or whoever shall keep any part of the milk known as "strippings," or whoever shall knowingly bring or supply milk to any cheese manufactory, butter manufactory, or creamery that is **tainted** or partly sour from want of proper care in keeping pails, strainers, or any vessels in which said milk is kept, clean and sweet, after being notified of such taint or carelessness, or any cheese manufacturer or butter manufacturer who shall knowingly use, or direct any of his employees to use, for his or their individual benefit, any cream of the milk brought to the cheese or butter manufacturer, without the consent of all the owners thereof, shall, for each and every offense, forfeit and pay a sum of not less than twenty-five dollars nor more than one hundred dollars, with the costs of suit, to be sued for in any court of competent jurisdiction, for the benefit of the person or persons, firm, association, or corporation, or their assignees, upon whom such fraud be committed.

5833 (235). It shall be unlawful to **transport** or carry the substance or material generally known and called **nitro-glycerine** into, out of, within, through, or across this state, except as herein provided. Every wagon, cart, or other vehicle used in carrying nitro-glycerine shall have printed upon both sides and ends thereof in plain and distinct letters, large enough to occupy a space of two inches wide by eighteen inches long, the words, "nitro-glycerine"—"dangerous;" and every package, can, cask, barrel, or box, containing nitro-glycerine, shall have written or printed thereon upon two sides thereof, in plain and distinct letters, the words "nitro-glycerine"—"dangerous."

5834 (236). Every **railroad**, stage coach, steamship, vessel, or other water craft within this state, whose business it is to carry passengers, or who shall at the time be engaged in **carrying passengers**, are hereby **prohibited from carrying** or having on board thereof **nitro-glycerine**; and it shall be unlawful for any person, persons, or company to permit any passenger to ride on any conveyance as aforesaid that has on board thereof any of the substance or material aforesaid.

5835 (237). It shall be unlawful for any person or persons to **manufacture nitro-glycerine** within this state within a distance of one hundred and sixty rods of any occupied dwelling or public building, or to **store** the same in any quantity exceeding one hundred pounds within the limits of any city or incorporated village, or in any other place within one hundred and sixty rods of any occupied dwelling or public building.

5836 (238). Any person or **persons** knowingly **offending** against any of the provisions of either of the last three preceding sections shall pay a fine not exceeding one thousand dollars, or be imprisoned in the county jail not more than three months, or both, at the discretion of the court.

5837 (239). Every owner or possessor of land shall cut or mow down all **Canada thistles** growing thereon, or in the highway adjoining the same, so often as to prevent their going to seed, and if any owner or possessor of land knowingly shall suffer any such thistles to grow thereon, or in any highway adjoining the same, and the seed to ripen so as to cause or endanger the spreading thereof, he shall forfeit and pay a fine not less than ten dollars nor more than forty dollars; and any person may enter on the land of another, who shall neglect or refuse to cut or mow down such thistles, for the purpose of cutting or mowing the same down, and shall not be liable to be sued in an action of trespass therefor.

5838 (240). If any person shall, knowingly, vend any grass or other **seed** in which there is any seed of the Canada thistle, such person shall, for every such offense, be fined the sum of twenty dollars.

Secs. 5839 to 5842. "An act to regulate the means of egress from public buildings." 1877, p. 117. In force June 1.

5839. That all public buildings now in process of construction, or hereafter to be built or constructed, which may or shall be used for churches, school houses, operas, theatres, lecture rooms, hotels, public meetings, town halls, or which may or shall be used for any purpose, whereby a collection of people may be assembled together for religious worship, amusement, instruction, or other purpose, shall be so built and constructed that all doors leading from the main hall or place where said collection of people may be assembled, or from the principal room which may be used for any of the purposes aforesaid, shall be so swung upon their hinges and constructed that they shall open outward, and that all means of egress for the public from the main hall or principal room, and from the building, shall be by means of doors which shall open outward from the main hall or building.

5840. That all public buildings now built and used for any of the purposes mentioned in section one of this act shall within one year from the first day of July, A. D. 1877, be so changed that their doors and means of egress shall be in conformity with the provisions of this act; *Provided*, That the provisions of this section shall not apply to churches and school houses already erected in rural districts.

5841. That any person or persons who shall fail or refuse to comply with the provisions of this act shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars.

5842. That in all cities and towns having a population of one thousand inhabitants and upwards, the mayor of said town or city shall be and he is hereby authorized to close and prohibit all public buildings from being used for any of the purposes mentioned in section one of this act, until the provisions of this act shall be complied with.

Sec. 5843. "An act to make the selling or giving away of fire-arms, ammunitions, or other munitions which can be used in fire-arms to any Indian not a citizen, a felony, and providing a penalty therefor." 1891, p. 267. In force April 8.

5843. Any person who shall sell or give away under any pretext whatsoever, to any Indian not a citizen, any fire-arms, ammunition, or other munitions of any kind which can be used in fire-arms shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the penitentiary for a term not less than two years nor more than five years, or a fine not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

CHAPTER XXIII.—MISCELLANEOUS OFFENSES.

5844 (241). If any person of the age of fourteen years or upward shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, or shooting, he or she shall be fined in a sum not exceeding twenty dollars, or be confined in the county jail for a term not exceeding twenty days, or both, at the discretion of the court. And if any person of the age of fourteen years or upward shall be found on the first day of the week, commonly called Sunday, at common labor (work of necessity and charity only excepted), he or she shall be fined in any sum not exceeding five dollars nor less than one dollar; *Provided*, Nothing herein contained in relation to common labor on said first day of the week, commonly called Sunday, shall be construed to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent families emigrating from traveling, watermen from landing their passengers, superintendents or keepers of toll bridges or toll gates from attending and superintending the same, or ferrymen from conveying travelers over the water, or persons moving their families on such days, or to prevent railway companies from running necessary trains.

That a person *believes* the seventh day to be the Sabbath is no protection; he must observe it. **26**, 469 (42 N. W., 419).

5845 (242). All idle persons not having visible means of support and maintenance, and who live without employment, and all persons wandering abroad and living in taverns, groceries, beer houses, market places, sheds, barns, or in open air, and not giving a good account of themselves, and all persons wandering about and begging, or who go about from door to door, or from place to place, or occupy public places for the purpose of begging and receiving alms, and all prostitutes, and all keepers, occupants, lessees, and pimps of houses used for prostitution or gambling, shall be deemed and are hereby declared to be **vagrants**; and upon conviction thereof shall be fined not exceeding fifty dollars, or imprisoned in the jail of the county not exceeding three months, and be subject to hard labor in said jail or elsewhere in the county, as the court may order; *Provided*, That any person so convicted, who shall be disqualified for manual labor by physical inability, and shall be a proper object for relief, shall be sent to the alms house of the proper city or county, or otherwise cared for, according to law.

Rewritten, 1875, p. 16.

5846 (243). If any person or persons shall exhibit any **puppet show**, wire-dancing, or tumbling, juggling, or sleight of hand, within this state, **without** first obtaining **license** as may be required by law, or by municipal ordinance, and shall ask and receive any money or other property for exhibiting the same, every person so offending shall forfeit and pay for every such offense the sum of ten dollars.

5847 (244). If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall **remove** the body or **bodies**, or remains of any deceased person or persons, **from** the **grave** or place of sepulture, for the purpose of dissection, or any surgical, or any anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel, or procure the same to be done, every such person or persons so offending shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars.

5848 (245). The **preceding section** shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority, nor shall it be so **construed** as to prevent any person from removing the body or bodies of their deceased relations or intimate friends to any other place of sepulture that he or she may think proper.

TRADE.

Sec. 5849. "An act to prevent the uttering of false pedigrees of stock and fixing a penalty therefor." 1883, p. 61. In force June 1.

5849. If any person shall knowingly, and with intent to deceive, furnish to any purchaser of **stock** a printed or written **false pedigree** of the same, whereby such purchaser shall be induced to buy said stock, the person so offending shall be guilty of a misdemeanor, and on conviction thereof be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment, as the court may direct.

Secs. 5850 to 5852. "An act to prohibit grain dealers, persons, partnerships, companies, corporations, or associations from combining or entering into any agreement or contract to pool or fix the price to be paid for grain, hogs, cattle, or stock of any kind whatever, and to provide punishment for violations of the same." 1887, p. 675. In force July 1.

5850. That it shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association to enter into any agreement, contract, or combination with any other grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall pay for grain, hogs, cattle, or stock of any kind or nature whatever; and in case of any agreement, contract, or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense.

5851. That in case any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall be liable to the person or persons injured thereby to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fees shall be taxed and collected as a part of the costs in the case; and in any such action brought for the recovery of damages, the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association of grain dealers, or any person or persons, partnership, company, corporation, or association, subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employer, or clerk of them or either of them, defendant in such suit, to attend, appear, and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, corporation, company, or association of grain dealers, or any other person or persons, partnership, corporation, company, or association, party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding.

5852. That any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director or officer, or any receiver, trustee, clerk, lessee, agent, or person acting for or employed by them or either of them, who alone or with any other partnership, company, corporation, association, person, or party shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter, or thing so directed or required by this act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any **infraction of** this **act**, or shall aid or abet therein, shall be deemed guilty of a **misdemeanor**, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars ($1,000), or imprisonment in the jail of the county not exceeding six (6) months, or both, in the discretion of the court, and shall, moreover, be liable to the suit of the party injured or damaged.

MORALS.

Secs. 5853 and 5854. "An act prohibiting selling, giving or furnishing tobacco in any of its forms to minors, and providing a penalty therefor." 1885, p. 394. In force June 1.

5853. That hereafter **no person** or persons in this state shall sell, give, or **furnish** any cigarette or cigarettes, or **tobacco** in any of its forms, to any **minor under fifteen** years of age.

5854. That if any person or persons in this state shall violate the provisions of this act, he, she, or they shall, on **conviction**, forfeit and pay for each and every such offense the sum of twenty-five dollars.

Secs. 5855 to 5857. **"An act for the punishment of players of three card monte, and other confidence games, and of persons for selling on railroad trains prize packages and other prizes." 1875, p. 21. In force February 25.**

5855. Whoever shall, in this state, deal play, and practice, or be in any manner accessory to the dealing, **playing**, or practicing of the confidence game or swindle known as three card monte, or of any such game, play, or practice, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, and by confinement in the penitentiary not less than two nor more than five years.

5856. Whoever shall in this state, on any railroad car, coach, or train, practice any confidence game not mentioned in the preceding section, or shall **sell** any **prize packages**, or other prize, or offer the same for sale, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three months.

5857. It is hereby made the duty of **railroad conductors, brakesmen** on railroad trains, and of all other persons cognizant of the act, **to** immediately **arrest** the **person** so **offending**, without warrant or other process, and call upon all bystanders or others for assistance, when the same may be necessary to enable them to make such arrests; and when such offense is committed on any railroad car, coach, or train, the venue shall lie, and the person be tried in any county through which such railroad may run, any law to the contrary notwithstanding; and the employees of any such railroad company shall have the power and authority to eject any such person or persons by force from the cars of such company whenever such person or persons shall be found practicing or attempting to practice any such game therein.

Sec. 5858 formed sec. 1 of **"An act defining certain crimes and providing punishment therefor."** 1875, p. 26. In force June 1. (For secs. 2 to 4, sees *ante*, secs. 5707-9.

5858. That the infamous **crime against nature**, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and my [may] extend to life.

Secs. 5859 to 5864. "An act to suppress the circulation, advertising, and vending of obscene and immoral literature and articles of indecent and immoral use, and to confiscate such property," etc. 1887, p. 671. In force July 1. (Repealing criminal code, sec. 206.)

5859. Whoever sells, or offers for sale, or gives away, or has in his possession with intent to sell, loan, or give away, any obscene, lewd, indecent, or lascivious book, pamphlet, paper, drawing, lithograph, engraving, picture, photograph, model, cast, or any instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, giving information, directly, or indirectly, when, where, how, or by what means any of the articles or things hereinbefore mentioned can be purchased or otherwise obtained or made, shall, on conviction thereof, be punished by a fine of not more than one thousand dollars nor less than fifty dollars, or by imprisonment in the county jail not more than one year, or both such fine and imprisonment, at the discretion of the court.

5860. Whoever deposits in any postoffice within this state, or places in charge of any person to be carried or conveyed, any of the articles or things named in section 1 of this act, or any circular, handbill, card, advertisement, book, pamphlet, or notice of any kind, giving information, directly or indirectly, when, how, where, or by what means any of the articles or things mentioned in section one (1) of this act can be purchased or obtained, or knowingly or willfully receives the same to carry or convey, or knowingly carries or conveys the same in any manner, except in the United States mail, shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or both fined and imprisoned at the discretion of the court.

5861. Whoever prints or publishes or causes to be printed or published in any newspaper published or circulated in this state any advertisement of medicine, drug, nostrum, or apparatus for the cure of private or venereal diseases, or shall circulate or distribute any newspaper containing such an advertisement or notice mentioned in this section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000) nor less than fifty dollars, or be imprisoned in the county jail not more than one year, or both fine and imprisonment, at the discretion of the court.

5862. Whoever sells, lends, gives away, or shows, or has in his possesion with or without intent to sell, give away, or show to any minor child any book, pamphlet, magazine, newspaper, story paper, or other paper devoted to the publication, or principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures and stories of immoral deeds, lust, or crime, or exhibits upon any street or highway, or any place within the view, or which may be within the view, of any minor child any of the above described books, papers, or pictures, or uses or employs any minor child to give away, sell, or distribute, or who, having the care, custody, or control of any minor child, permits such child to sell, give away, or distribute any such books, papers, or pictures above described, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars ($500) nor less than fifty dollars ($50), or be imprisoned not more than six months in the county jail, or both fined and imprisoned, at the discretion of the court.

5863. All magistrates in this state are authorized, on due complaint supported by oath or affirmation of one or more persons, to issue a warrant directed to the sheriff of the county within which such complaint shall be made, or to any constable or police officer within said county, directing him or them, or any of them, to search for, seize, and take possession of such books, papers, pictures, circulars, articles and things named in sections one (1) and four (4) of this act, and said magistrate shall deliver personally or shall transmit, enclosed and under seal, specimens thereof to the county attorney of his county, and shall deposit within the county jail of his county or other secure place as to him shall seem meet, enclosed and under seal, the remainder thereof, and shall, upon the conviction of the person or persons offending under the provisions of this act, forthwith, in the presence of the person or persons upon whose complaint the said seizure or arrest was made, if he or they shall elect to be present, destroy, or cause to be destroyed, the remainder thereof so seized as aforesaid, and shall cause to be entered upon the record of his court the fact of such destruction.

5864. Nothing in this act shall be construed to affect teaching in regular chartered medical colleges; or the publication or use of standard medical books, or the practice of regular practitioners of medicine, or druggists in their regular business; or the possession by artists of models in the necessary line of their art.

SAFETY.

Secs. 5865 to 5871. "An act relating to and to punish tramps." 1879, p. 64. In force June 1.

5865. Any person going about from place to place and asking or subsisting on charity shall be taken and deemed to be a tramp.

5866. Any tramp who shall ask and receive from any person of any precinct, town, village, or city within this state any food, clothing, lodging, or other assistance, may be requested by such person, in his or her discretion, to perform a reasonable amount of labor therefor, and any such tramp who shall refuse to perform any such labor when so requested shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than three dollars nor more than twenty dollars and cost of prosecution, and shall stand committed until the same is paid, but not exceeding one day for each dollar of fine; or may be imprisoned in the county jail, at hard labor, not less than three days nor more than twenty days, in the discretion of the court; but no such tramp shall be required to perform any such labor before six o'clock in the morning, or after six o'clock in the evening.

5867. Any tramp who shall willfully and maliciously do any injury to any person, or to the property, real or personal, of any person, or who shall procure food, clothing, or other property from any person by threats, or by force, shall be deemed guilty of a felony, and, on conviction thereof shall be punished by confinement, at hard labor, in the state prison for a term not exceeding three years and not less than one year.

5868. This act shall not apply to any minor under the age of sixteen years nor to any female, nor any blind person.

5869. All prosecutions for any of the offenses described in section two of this act may be tried and determined by the county judge, any justice of the peace or magistrate of the county in which the offense is committed, or, if in the limits of any city, town, or village, by the police court of said city, town, or village, and any court before whom such prosecution is tried may sentence the offender to pay a fine not exceeding twenty dollars, and may issue his warrant to carry such judgment into effect in case no appeal is taken.

5870. Whenever any tramp in this state shall have committed any offense described in this act, any sheriff, deputy sheriff, constable, city marshal, or policeman of the county, precinct, town, or city in which such offense is committed may, without warrant, and it is hereby made their duty, to apprehend such person and retain him in custody, at the expense of the county, city, town, or village in any place within the county, and to prepare and file with the proper magistrate or court his complaint against such offender, and it shall be the duty of the officer making the arrest, to forthwith file with the proper magistrate, or court, his complaint against such offender, and to prosecute the same.

5871. In all prosecutions before a justice of the peace, or police court, for violations of the provisions of section two of this act, the costs of prosecution shall be paid out of the county, city, town, or village treasury.

PART II.—CRIMINAL PROCEDURE.

CHAPTER XXIV.—DEFINITIONS AND GENERAL PROVISIONS.

5872 (246). Unless when otherwise provided, words used in this code in the present **tense** includes the future as well as the present. Words used in the masculine **gender** comprehend as well the feminine and neuter. The singular **number** includes the plural, and the plural the singular. The term "**writing**" includes printing. The term "**oath**" includes an affirmation.

5873 (247). The term "**felony**" signifies such an offense as may be punished with death or imprisonment in the penitentiary. Any other offense is denominated a **misdemeanor.**

5874 (248). The term "**magistrate**" in this code, when not otherwise expressly stated, is used to mean a justice of the peace, probate judge, mayor of a city or incorporated village, or police judge.

5875 (249). The term "**prosecuting attorney**" signifies the same as district attorney.

5876 (250). In the **construction of** this **code** each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

5877 (251). This **code** and every other law upon the subject of crime which may be enacted shall be **construed** according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words, upon pretense that he has offended against its spirit.

5878 (252). Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "person" or any other **general term** is used to designate the party whose property is intended to be protected, the **provisions** of such penal laws and the protection thereby given shall **extend** to the property of the state, or of any county, and of all public or private corporations.

5879 (253). The word "**signature**" includes the mark of a person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person and the mark is made near thereto by the person unable to write his name.

5880 (254). Except where a word, term, or phrase is specially defined, all **words** used in this code are to be taken and **construed** in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed. The **titles** merely, to the various chapters, sections, or clauses of this **act,** which are written or printed upon the bill at the time of its passage, shall constitute **no part of** this **act** of the legislature.

5881 (255). **No offense** committed, and no fine, forfeiture, **or penalty** incurred **under existing laws** previous to the taking effect of this code, shall be **affected** by the repeal herein of any such existing laws, but the punishment of such offenses, the recovery of such fines and forfeitures shall take place as if said laws repealed had remained in force; *Provided*, That the manner of procedure for the enforcement or imposition of all such punishments, and the collection of all such fines and forfeitures, shall be in accordance or as nearly in accordance with the provisions of this code as the nature of the case will admit; and in any case whatsoever, should the procedure provided for in this code be wholly inadequate, the procedure provided for in the laws repealed by this code may be followed so far as necessary to prevent a failure of justice.

Manner of procedure is under the law as it existed at the time of the commission of the offense. **20**, 237 (29 N. W., 911). One charged with a capital crime must be tried under the law in force when crime committed. **16**, 356 (20 N. W., 289).

5882 (256). **[Prosecutions—Limitations.]**—No person or persons shall be prosecuted for any felony (treason, murder, arson, and forgery excepted), unless the indictment for the same shall be found by a grand jury, within three years next after the offense shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information, or action for the same shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture, or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars, and to imprisonment not exceeding three months; *Provided,* That nothing herein contained shall extend to any person fleeing from justice; *Provided, also,* That where any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute; *And provided, also,* That where any indictment, information, or suit shall be quashed, or the proceedings in the same set aside or reversed, on writ of error, the time during the pendency of such indictment, information, or suit so quashed, set aside, or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information, or suit for the same offense.

5883 (257). All fines and **punishments** provided in this code shall be **enforced** by the **procedure** provided for in this code, so far as such procedure extends or can be made applicable.

5884 (258). Any **person sentenced** to be punished for any felony (when sentence shall not have been reversed or annulled) shall be deemed **incompetent to be an elector** or **juror, or** to **hold** any **office** of honor, trust, or profit within this state, unless said convict shall receive from the governor of this state a general pardon, under his hand and seal of the state, in which case said convict shall be restored to his civil rights and privileges; *Provided, however,* That such pardon shall not release such convict from the costs of his conviction.

5885 (259). Any **person** who shall been actually **imprisoned** in the penitentiary of any other state or territory of this union, under sentence for the commission of any crime which, by the laws of this state, is punishable by imprisonment in the penitentiary, shall be deemed **incompetent** to be an elector or juror, or to hold any office of honor, trust, or profit within this state, unless said convict shall have received a general pardon from the governor of the state in which he may have been imprisoned, agreeably to the laws thereof.

CHAPTER XXV—POWERS AND DUTIES OF CERTAIN OFFICERS.

5886 (260). All justices of the peace, mayors, police judges, and probate judges in this state shall have the same and equal powers of **jurisdiction in** all matters relating to the **enforcement of** the **criminal laws** of the state, except as otherwise expressly provided, and the jurisdiction of all such officers as magistrates above named for the discharge of the duties and for the exercise of the powers enjoined and conferred by this code shall extend to all crimes and offenses punishable by the laws of this state, committed within the counties where each of said officers respectively resides and legally holds his office, and also for the prevention of crimes and offenses as in this code provided, throughout their respective counties.

5887 (261). In cities in which there is a **police judge,** the **mayor** shall not, except in cases of urgency or necessity, be required to hear or examine into any criminal charge or case, and any warrants issued by the mayor of such city shall be returnable before the judge of the police court.

5888 (262). The **judges of** the **district courts** in their respective districts, and the magistrates mentioned in section two hundred and sixty, in their respective counties, shall jointly and severally be **conservators of the peace** within their respective jurisdictions, and shall have full power to enforce or cause to be enforced all laws that now exist or that shall hereafter be made for the prevention and punishment of offienses, or for the preservation and observance of the peace. The said judges of the district courts shall have the same powers to require securities for the keeping of the peace, and the good behavior, and bail for appearance in courts to answer complaints to keep the peace, and for crimes and offenses committed in their respective districts as any of the magistrates aforesaid have in their respective counties.

Amended 1875, p. 16.

5889 (263). **Constables** shall be ministerial officers of the courts holden by justices of the peace in criminal cases, within their respective counties. And it shall be their duty to apprehend and bring to justice felons and disturbers of the peace, and to suppress riots and to keep and preserve the peace within their respective counties. They shall have power, and they are hereby authorized to execute all writs and process in criminal cases throughout the county in which they may reside and where they were elected or appointed.

5890 (264). If any **person** or persons, who may be charged with the commission of a crime or offense made punishable by the laws of this state, shall **abscond** or remove from the county in which such crime or offense be charged to have been committed, it shall be lawful for any **sheriff, constable,** or other person to **apprehend** the person or persons so charged, and forthwith remove him, her, or them to the county in which the alleged crime may be said to have been committed, and deliver such person or persons to any magistrate in said county, who shall cause the person or persons so delivered to be dealt with as the law may direct.

5891 (265). Every city, town, or village **marshal,** lawfully holding such office, shall be the appropriate ministerial officer of the police court or mayor's court of the city or town or incorporated village, and as such shall have all the powers and be charged with all the duties of constables in the making of arrests, serving process, and preserving the peace, as prescribed in the last two preceding sections in criminal matters.

Police judge has no jurisdiction over felonies but to recognize them to district court. 6, 106.

5892 (266). That it shall be lawful for any justice of the peace within this state, upon the written application of any three freeholders of any township thereof, to appoint one or more **special constables** within such township, whose duty it shall be to watch and guard the property of said freeholders, and to protect the same from all unlawful acts, and in the discharge of their duty they shall have authority to make arrests. The justice making such appointment shall make a memorandum thereof upon his docket, and the same shali continue in force for one year, unless sooner revoked by such justice. The constables appointed by virtue of this section shall be paid in full for their services by the freeholders for whose benefit they are appointed, and shall receive no compensation except from said freeholders.

CHAPTER XXVI.—PROCEDURE TO PREVENT CRIMES AND OFFENSES.

5893 (267). Whenever any person shall make **complaint** in writing, upon oath, before any justice of the peace, mayor of any city or incorporated village, police judge, or probate judge, that he has just cause to **fear** and does fear, **that another will commit** any **offense** against the person or property of himself, his ward, or child, it shall be the duty of the magistrate before whom such complaint is made, to issue a warrant in the name of the state to any constable of the county, commanding him forthwith to arrest the person complained of, and him to take before such magistrate, or any other magistrate named in this section, of the same county, to answer such complaint.

5894 (268). When the party complained of shall be brought before the magistrate, he shall be heard in his defense, and all witnesses produced shall be examined upon oath, and if, upon such **examination,** the magistrate shall be of the opinion there is just cause for the complaint, he shall order the person complained of to enter into **recognizance,** with good and sufficient security in any sum not less than fifty dollars nor more than one thousand dollars, for his appearance before the district court on the first day of the next term thereof, or forthwith, if it be term time of said court, and in the meantime that he shall keep the peace, and be of good behavior generally, and especially toward the person complaining.

5895 (269). In **default** of such **recognizance** and security, as provided in the preceding section, the **magistrate** shall **commit** the person complained of to the jail of the county, there to remain until discharged by due course of law.

5896 (270). But if the magistrate, on the examination, shall be satisfied that there is no just cause for the complaint, it shall be his duty to **discharge** the **accused,** and render judgment, in the name of the state, against the party complaining, for the **costs** of the prosecution, and the same shall be collected by execution as in civil cases.

• Justice can render judgment for costs only against the person complaining and only for costs of prosecution; and where complaint was filed by wife, on account of herself and also her husband, judgment for costs against the husband was held erroneous. **10,** 587 (7 N. W. 333).

5897 (271). In case the defendant is recognized or committed as aforesaid, the magistrate shall require the material **witnesses** in the case to enter into **recognizance** to appear in court, as described in section three hundred and three, three hundred and four, [and] three hundred and five.

All after * substituted for "section 328," 1875, p. 17.

5898 (272). All **recognizances** authorized to be taken as aforesaid, either in term time or vacation of that court to which the same may be **returnable,** shall be delivered or transmitted by the magistrate taking the same to the clerk of such court, without unnecessary delay, and before the commencement of the term of the court next thereafter to be holden, if such recognizance be taken in vacation; but if the same be taken in term time, then it shall be returned forthwith.

5899 (273). Every person who, in the presence of any magistrate specified in the first section, shall make an affray or threaten to kill or beat another or to commit any **offense** against the person or property of another, and every person who, **in** the **presence of** such **officer,** shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process, or any other proof, to give such security as above specified in this title, and in case of failure or refusal, he may be committed in like manner as above specified.

5900 (274). The **district court** to which any transcript or recognizance to keep the peace, as aforesaid, shall be returned, shall, upon the appearance of the parties complaining and complained of, **examine** the witnesses produced upon oath, and may either discharge the accused from his recognizance or commitment, or may order him to enter into such other and further security as may be just thereafter to keep the peace and be of good behavior for such term of time as the court may order.

5901 (275). For want of such security the court shall **commit** the person **accused** to the jail of the county, there to remain until such order be complied with, or he be otherwise discharged by due course of law; but in no case shall a person so **failing to give security** be confined for a period of time exceeding one year.

5902 (276). Whether such person be held to bail or committed for want thereof, the court shall, in either case, render judgment against him for the **costs** of the prosecution and award execution therefor.

5903 (277). When any person shall have been recognized to the court to keep the peace as aforesaid, and the **complainant** shall **fail to prosecute** his complaint, the party recognized shall be discharged unless good cause to the contrary be shown.

5904 (278). **If** the district **court** shall **discharge** the person **accused** on the examination of the complaint, or because the complainant has failed to appear, said court may, in its discretion, render judgment against the person complaining for the costs of prosecution, and award execution therefor.

5905 (279). If, at any time, the sheriff of any county, constable, or marshal, or other police officer of any city or incorporated village, shall have reason to believe that any **person** in his bailiwick is **about to engage** as principal **in** any **fight** or contention described in section seven of this code, or is in preparation or training to engage as principal in any fight or contention, he shall forthwith arrest such person and conduct him before any judge of the district court, or a magistrate in his county, and upon the proper affidavit being filed, prosecute the complaint; and thereupon the judge or magistrate shall inquire into the truth of said charge, and if he shall find it true, he shall require the accused to enter into a **recognizance,** with sufficient sureties, residents of this state, to be approved by such judge or magistrate, in a sum not less than five hundred nor more than ten thousand dollars, conditioned that the accused will not engage in any such fight or contention within the period of one year from and after the date of such arrest, and in default of such recognizance, such judge, justice, or mayor shall commit the party accused to the jail of the county, there to remain until he gives such recognizance, with sureties; *Provided,* That if, after the expiration of one month, the person so confined is unable to enter into such recognizance, the probate judge of the proper county may discharge such person on his own recognizance, in the same amount and with the same conditions, on proof satisfactory to such judge, by the affidavit of the accused, and other evidence, that the person so confined will not engage or be concerned in any such fight or contention within the time limited in said recognizance.

5906 (280). Every such **recognizance** or affidavit taken shall be by such judge or magistrate **certified** to the district court of the proper county, where the same shall be **recorded;** and any district attorney who shall receive information or have reason to believe, that the **condition** of any such recognizance has been **broken,** shall immediately bring suit thereon in any county of this state, collect the amount due thereon, and pay the same into the treasury of the proper county.

5907 (281). If any sheriff shall have information and reason to believe that such **fight** or contention as is described in section seven of this code is **about to take place** in his county, he shall forthwith summon a force of citizens of the county sufficient for the purpose, and suppress such fight or contention, and **arrest** all **persons present** thereat who may be found violating any of the provisions of section seven or section eight of this act, and take them before some judge of the district court, or a magistrate, to be dealt with as provided by law.

5908 (282). All the **expenses** of carrying into effect the provisions of the last three preceding sections shall, in the first instance, be paid out of the county treasury, on a certificate of a judge of the court or magistrate before whom such examination shall be had; and such court or magistrate shall proceed, upon finding such charge true, to collect, from the person or persons against whom said complaint was found true, all the costs in said proceedings, to be taxed as in other criminal proceedings, in the manner provided by law for collecting fines and costs in criminal cases, and shall pay the same, when collected, into the treasury of the proper county.

CHAPTER XXVII.—ARREST AND ARRAIGNMENT BEFORE MAGISTRATES.

5909 (283). Every sheriff, deputy sheriff, constable, marshal, or deputy marshal, watchman, or police **officer** shall **arrest** and detain any person from violating any law of this state, or any legal ordinance of any city or incorporated village, **until** a legal **warrant** can be **obtained.**

5910 (284). Any **person not** an **officer may,** without warrant, **arrest** any person, if a petit larceny or a felony has been committed, and there has been reasonable ground to believe the person arrested guilty of such offense, and may detain him until a legal warrant can be obtained.

A private person may legally arrest one supposed to be a horsethief. **16,** 623 (21 N. W., 387.

5911 (285). Justices of the peace, mayors of cities and villages, police judges and probate judges, shall have **power to issue process** for the apprehension of any person charged with a criminal offense.

5912 (286). Whenever a **complaint** in writing and upon oath, signed by the complainant, shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the **duty** of such magistrate **to issue** a **warrant** for the arrest of the person accused, if he shall have reasonable grounds to believe that the offense charged has been committed.

Title is no part of the complaint, a complaint is necessary to a valid examination. **28,** 341 (44 N. W., 444). If crime charged positively, it is not fatal that complaint not sworn to positively. **16,** 658 (21 N. W., 454). May be sworn to before clerk of court and is usually sufficient if in the language of the statute. **26,** 757 (42 N. W., 762). Cited, **10,** 80 (4 N. W., 511).

5913 (287). When the offense charged is a **misdemeanor,** the magistrate, before issuing the warrant, may, at his discretion, require the complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment of **security for costs** shall be entered on the docket, and the magistrate on dismissal may, if in his opinion the complaint was without probable cause, enter a judgment against such complainant for costs made thereon. And in case said magistrate shall consider such complainant wholly irresponsible, such magistrate may, in his discretion, refuse to issue any warrant unless the complainant procure some responsible security to the satisfaction of such magistrate for said costs in case of such dismissal, and said security shall acknowledge himself **so bound,** and the magistrate shall enter it on his docket.

Public officers not required to furnish security for costs. **20,** 305 (30 N. W., 58). Costs can be adjudged against complainant only after a finding that the complaint was without probable cause or malicious. **13,** 463 (14 N. W., 396). Constable cannot demand fees in advance for summoning jurors. **27,** 400 (43 N. W., 177).

5914 (288). The **warrant** shall be **directed** to the sheriff or to any constable of the county, or if the same be issued by an officer of a municipal corporation authorized to issue such warrant, then to the marshal or other police officer of such corporation, and reciting the substance of the accusation, shall command the officer forthwith to take the accused, and bring him before the magistrate or court issuing the warrant, or some other magistrate having cognizance of the case, to be dealt with according to law; and no seal shall be necessary to the validity of the warrant.

5915 (289). The magistrate issuing any such warrant may make an order thereon authorizing a person to be named in such warrant to execute the same; and the person named in such order may execute such warrant anywhere in the state, by apprehending and conveying such offender before the magistrate issuing such warrant, or before some other magistrate of the same county; and all sheriffs, coroners, and constables and others, when required, in their respective counties, shall aid and assist in the execution of such warrant.

5916 (290). If any person charged as aforesaid with the commission of an offense shall flee from justice, it shall be lawful for the officer in whose hands the warrant for such person has been placed to pursue and arrest such person in any other county in this state, and him to convey before the magistrate issuing the warrant, or any other magistrate having cognizance of the case, of the county where such offense was committed.

5917 (291). If any person charged with an offense shall abscond or remove from the county in which such offense is alleged to have been committed, it shall be lawful for any magistrate of the county in which such person may be found to issue a warrant for the arrest and removal of such person to the county in which the offense is alleged to have been committed, to be there delivered to any magistrate of such county, who shall cause the person so delivered to be dealt with according to law, and the warrant so issued shall have the same force and effect as if issued from the county in which such offense is alleged to have been committed.

5918 (292). Any officer or other person having in lawful custody any person accused of an offense for the purpose of bringing him before the proper magistrate or court, may place and detain such prisoner in any county jail of this state, for one night or longer, as the occasion may require, so as to answer the purposes of the arrest and custody.

5919 (293). In executing a warrant for the arrest of a person charged with an offense, or a search warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if, after notice of his office and purpose he be refused admittance. But this section is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.

5920 (294). Whenever any person has been arrested under a warrant as provided in the preceding sections of this chapter, it shall be the duty of the officer making the arrest to take the person so arrested before the proper magistrate; and the warrant, by virtue of which the arrest was made, with a proper return endorsed thereon and signed by the officer, shall be delivered to such magistrate.

5921 (295). When any offense is committed in view of any magistrate, he may, by verbal direction to any sheriff or constable or marshal or other proper officer, or if no such officer be present, then to any citizen, cause the offender to be arrested and kept in custody for the space of one hour, unless he shall sooner be taken from such custody by virtue of a warrant issued on complaint under oath; but a person so arrested shall not be confined in jail nor put upon trial until arrested by virtue of such a warrant.

5922 (296). The county commissioners of the several counties in this state are hereby authorized, when they deem the same expedient, to offer such rewards as in their judgment the nature of the case may require, for the detection or apprehension of any person charged with or convicted of a felony, and pay the same on the conviction of such person, together with all necessary expenses not otherwise provided for by law, incurred in making such detection or apprehension, out of the county treasury.

Sec. 5923. "An act to authorize sheriffs to offer reward for the capture of horse thieves, and to provide for the payment of the same. 1879, p. 181. In force June 1.

5923. That the sheriffs of the several counties within this state are hereby authorized to offer and pay a reward not exceeding the sum of fifty dollars for the capture and conviction of any person charged with stealing a horse or horses within their respective counties, and the county commissioners of such counties shall audit the accounts of such sheriffs for money paid out as such rewards, together with all necessary expenses incurred in the apprehension and detention of any such horse thief, and pay the same out of the treasury of their county.

CHAPTER XXVIII.—ADJOURNMENT AND EXAMINATION BEFORE A MAGISTRATE.

5924 (297). If it shall become necessary for any just cause to adjourn the examination of any person brought before the magistrate as set forth in the preceding chapter, it shall be lawful for such magistrate to adjourn such examination and commit such person, from time to time, for safe keeping, to the jail of the county, until the cause of delay be removed, and no longer; *Provided*, The whole time of such confinement in the jail shall not exceed four days; *Provided, also*, That the officer having in custody any such person, may, by the written order of the magistrate, detain such person in custody in some secure and convenient place other than the jail, to be designated by said magistrate in his order, not exceeding four days. And it shall be the duty of the officer in whose custody any person shall be detained as above, to provide for the sustenance of such prisoner while in custody.

5925 (298). When it shall become necessary to adjourn any trial according to the provisions of the preceding section, the person accused may enter into a recognizance before the magistrate, with good and sufficient security to be approved by the magistrate, in such amount as he shall deem reasonable, conditioned for the appearance of such person before said magistrate, at a place and day and hour in said recognizance specified; *Provided*, That such adjournment shall not be for a longer time than twenty days without the consent of the accused; *And provided*, That no person shall be let to bail who is charged with an offense not bailable under the constitution of this state.

This does not apply to district court. **15,** 486 (19 N. W., 607). Need not be entered at large on justice docket. Is binding when returned into district court by justice. **18,** 381 (25 N. W. 519).

5926 (299). If any person recognized, agreeably to the last preceding section, shall fail to appear at the time appointed, or shall otherwise fail to comply with the conditions of the recognizance, the magistrate shall declare the same forfeited, and transmit a transcript of his proceeding in the case, together with the recognizance, to the clerk of the proper court; and such proceedings shall be had thereon by said court as shall be deemed expedient, and as if the recognizance had been taken in said court.

5927 (300). When the complaint is for a felony, or for an offense for which the fine can exceed one hundred dollars, or the imprisonment can exceed three months, upon the accused being brought before the magistrate he shall proceed as soon as may be, in the presence of the accused, to inquire into the complaint.

5928 (301). The magistrate, if requested, or if he sees good cause therefor, shall order that the **witnesses** on both sides shall be examined each one separate from all the others, and that the witnesses for may be kept separate from the witnesses against the accused during the examination.

5929 (302). If, upon the whole examination, it appears that there has been no offense committed, or that there is not probable cause for holding the **prisoner** to answer the offense, he shall be **discharged.**

An examination under this statute is not a trial, and is no bar to another examination before another magistrate. 10, 81 (4 N. W., 511).

5930 (303). If it shall appear that an offense has been committed, and there is probable cause to believe the prisoner guilty, the magistrate shall bind by recognizance such **witnesses** against the prisoner as he shall deem necessary, to appear and testify before the court having cognizance of the offense, on the first day of the next term thereof, and not to depart from such court without leave. If the court is in session, they shall be **recognized** to appear forthwith, but no recognizance requiring such witnesses to appear at the next term shall be invalid from the fact that the court is in session.

5931 (304). When the magistrate is satisfied that there is reason to believe that any such **witness** will not perform the condition of his own **recognizance,** he may, when the offense charged is a **felony,** order him to recognize with sufficient securities. Any person may recognize for a married woman or a minor to appear as a witness, or the magistrate may take the recognizance of either in a sum not exceeding one hundred dollars, which shall be valid notwithstanding the disability of coverture or minority.

Securities on a recognizance, held, discharged. 12, 310 (11 N. W., 317).

5932 (305). If any **witness** so required to enter into a recognizance **refuse** to comply with such order, the **magistrate** shall **commit** him or her to jail until he or she comply with such order or be otherwise discharged according to law.

5933 (306). It shall be the duty of every **magistrate** in criminal proceedings to keep a **docket** thereof as in civil cases. All recognizances taken under this title, together with a **transcript** of the proceedings, where the defendant is held to answer, shall be certified and returned forthwith to the clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of all the costs that have accrued, and the items composing the same.

5934 (307). If the offense for which the **prisoner** is held to answer be bailable, and the prisoner offer sufficient **bail,** a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged.

If the day fixed in the recognizance is in fact the first day of the next term of district court, it is sufficient. It is not necessary that names of signers be entered on body of recognizance. 17, 73 (22 N. W., 232).

5935 (308). If the **court** to which the accused is recognized to appear is **in session,** the condition of the **recognizance** shall be that he shall appear at such court forthwith, and not depart therefrom without leave; but no recognizance requiring the accused to appear at the next term shall be rendered invalid by the fact that the court is in session.

5936 (309). If on the examination it shall appear to the magistrate that the accused has committed an **offense** of a **higher** grade than that **charged,** he may be held to answer therefor.

5937 (310). If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

5938 (311). It shall be the duty of the magistrate who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offense is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said magistrate.

Omission of name of county from *mittimus* no ground for discharge on *habeas corpus*. **24,** 324 (38 N. W., 830).

5939 (312). Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall endorse on said copy the names of the witnesses written thereon as aforesaid; and any magistrate who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer who shall neglect to endorse the name of said witness or witnesses on a copy of said commitment, each magistrate, sheriff, or jailer offending in the premises shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name and for the use of any person who shall sue for the same in any court of record.

5940 (313). When the complaint is for a misdemeanor only, of any grade of punishment whatever, if the cause is pending before the probate judge of the county, before whom the defendant enters a plea of guilty to the complaint, it shall be lawful for such judge, in his discretion, to render judgment of fine or imprisonment, or both, according to the law of the case, and pass sentence accordingly, and enforce the same according to law.

County judge has jurisdiction to pass sentence for misdemeanor on plea of guilty for violation of liquor law. **19,** 273 (27 N. W., 119).

CHAPTER XXIX.—Trial of Minor Offenses Before Magistrates.

5941 (314). Magistrates shall have jurisdiction concurrent with the district court and co-extensive with their respective counties, in all cases of misdemeanor in which the fine cannot exceed one hundred dollars and the imprisonment cannot exceed three months, except as otherwise provided by law.

5942 (315). In all cases where the magistrate shall have jurisdiction to try and sentence or finally discharge, as described in the preceding section, the charge made against the defendant shall be distinctly read to him, and he shall be required to plead thereto, which plea the magistrate shall enter upon his docket. If the defendant refuse to plead, the magistrate shall enter the fact, with a plea of "not guilty" in his behalf.

5943 (316). After the plea of the defendant has been entered, if he plead not guilty, the defendant, or complainant, or the district attorney, if he be present, may demand a jury; but if no jury be demanded, the cause may be tried by the magistrate.

5944 (317). If a jury be demanded, the magistrate shall make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in courts of record, from which list the defendant and the district attorney, or complainant, shall strike out names alternately until each shall have struck six names, the defendant striking out the first name.

5945 (318). In case the defendant or the district attorney or complainant shall neglect to strike out such names, the magistrate shall proceed to strike out the names for either or both the parties so neglecting, and the magistrate shall issue a venire directed to the sheriff or any constable of the county, requiring him to summons the six persons whose names shall remain upon the list to appear before such magistrate at a time and place to be named therein, to serve as jurors for the trial of such cause.

5946 (319). If the defendant consent, the cause may be tried before a **jury** of any number of men more than two and **less than six**, to be selected from a list of double the number so agreed upon, or qualified inhabitants of the county, as provided in the last preceding section, each party striking out names from the list alternately, until the number so agreed upon shall remain, the defendant striking out the first name.

5947 (320). The **venire** shall be **served** personally upon the jurors, and returned within the time therein specified. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the magistrate shall supply the **deficiency** by directing the sheriff or constable, or other ministerial officer who may be present, and disinterested, to **summon** any of the **bystanders**, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause. The magistrate may compel any delinquent juror to attend by attachment. If the officer to whom the venire for a jury shall have been delivered, shall fail to return the same as thereby required, or if the jury shall fail to agree, and be discharged by the magistrate, a **new jury** shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as herein prescribed in respect to the first jury, unless the defendant shall consent to be tried by the magistrate, in which case the magistrate shall proceed to try the case as if no jury had been demanded.

5948 (321). In all trials for misdemeanors before a magistrate either party may **challenge** jurors for cause to the same extent as in trials for like offenses in the district court.

5949 (322). Whenever the defendant shall be tried under the provisions of this chapter, and found guilty either by the magistrate or jury, or shall enter a plea of guilty, the court shall render **judgment** thereon, assessing such punishment either by fine or imprisonment, or both, as the nature of the case may require and the law permit; in such case the defendant shall, in addition to the fine or imprisonment, be adjudged to pay the **costs,** and to be committed to the county jail until the judgment be complied with. Whenever the defendant, tried under the provisions of this chapter, shall be acquitted, he shall be immediately discharged, and if the magistrate or jury trying the case shall state in the finding that the complaint was malicious or without probable cause, the magistrate shall enter judgment against the complainant for all costs that shall have accrued in the proceedings had upon such complaint, and shall commit such complainant to jail until such costs be paid, unless he shall execute a bond to the people of the state of Nebraska in double the amount thereof, with security satisfactory to the justice, that he will pay such judgment within thirty days after the date of its rendition.

Complainant cannot be imprisoned for costs which are a mere civil liability. 11, 530 (10 N. W., 449).

5950 (323). The **judgment** of the magistrate shall be **carried into effect** as provided in chapter forty-nine. **Prosecutions** under this twenty-ninth chapter shall be **governed** by the provisions of this criminal code, so far as the same are in their nature applicable.

Cited, **11,** 531 (10 N. W., 449).

5951 (324). The defendant shall have the right of **appeal** from any judgment of a magistrate imposing fine or imprisonment, or both, under this chapter, to the district court of the county, which appeal shall be taken immediately upon the rendition of such judgment, and shall stay all further proceedings upon such judgment. No appeal shall be granted or proceedings stayed unless the appellant shall, within twenty-four hours after the rendition of such judgment, enter into a recognizance to the people of the state of Nebraska in a sum not less than one hundred dollars, and with sureties to be fixed and approved by the magistrate before whom said proceedings were had, conditioned for his appearance at the district court of the county at the next term thereof, to answer the complaint against him. The magistrate from whose judgment the appeal is taken shall make return of the proceedings had before him, and shall certify the complaint and warrant, together with all recognizances, to said district court, on or before the first day of the term thereof next thereafter to be holden in the county, and he may also require the complainant and witnesses to enter into recognizances, with or without security, as he may deem best, to appear at said court at the time last aforesaid, and abide the order of said court, and in case of refusal to enter into such recognizance, he may enforce the same by imprisonment if necessary.

Right of appeal is restricted to defendant, and does not apply to a complainant against whom judgment for costs has been rendered. **11,** 531 (10 N. W., 449). A recognizance proper should not be signed, but when it is otherwise properly taken and certified the signatures may be treated as surplusage. **10,** 329 (6 N. W., 370).

5952 (325). The **district court** shall hear and determine any cause under this act, brought by appeal from a magistrate, upon the original complaint, unless such **complaint** shall be found insufficient or **defective,** in which event the court, at any stage of the proceedings, shall order a new complaint to be filed therein, and the case shall proceed thereon the same in all respects as if the original complaint had not been set aside.

5953 (326). If, upon a trial in the district court, the **defendant** shall **be convicted,** the court shall assess the **punishment** and judgment shall be rendered against him accordingly, and for the **costs** before the magistrate, also for the costs in such court, and that he be committed to the county jail until the judgment be complied with.

5954 (327). If in the progress of any trial before a **magistrate,** under the provisions of this chapter, it shall appear that the defendant ought to be put upon his trial for an **offense not cognizable before** a magistrate, the magistrate shall immediately stop all further proceedings before him, and proceed as in other criminal cases, exclusively cognizable before the district court.

5955 (328). Whenever **conviction** shall be had before a magistrate under this chapter, he shall make a **certificate of** such conviction, under his hand, in which it shall be sufficient briefly to state the offense charged and the conviction and judgment thereon; and if any fine was assessed or collected, the amount so assessed and collected, with the date at which the same was so done. Such certificate shall be **filed by** the **magistrate** within twenty days after such conviction, in the office of the county clerk of the county in which such conviction was had; and the original, or a duly certified copy thereof, shall be evidence in all the courts of this state of the facts therein contained.

5956 (329). The **district attorney,** if present in any county in his district, in which any trial for misdemeanor is about to take place, or is in progress under this chapter, shall, if not actually engaged in any other business connected with his said office, appear and **prosecute** in such trial, if requested by the magistrate or the complainant.

CHAPTER XXX.—Fugitives to and from Other States and Countries.

5957 (330). When an **affidavit** shall be filed before any judge of a district court, or any judge of probate or police court, or any justice of the peace, within this state, setting forth that any person charged with the commission of any criminal offense against the laws of any other state or any of the territories of the United States, and which, if the act had been committed in this state, would, by the laws thereof, have been a crime, is at the time of filing such affidavit within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace, to issue his **warrant,** directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ the person so charged.

The complaint must set out specifically the nature of the crime, and that some complaint or indictment has been made against the prisoner in the state or territory from which he fled. 21, 557 (32 N. W., 594); **27,** 116 (42 N. W., 898).

5958 (331). When the **person arrested,** as provided in the last preceding section, shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer, to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such **examination** shall take place, or cause such person to be delivered to some suitable person, to be removed to the proper place of prosecution.

5959 (332). Whenever any **person** is **committed** to jail by any judge or justice of the peace. by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace forthwith to give **notice,** by letter or otherwise, **to** the **sheriff** of the county in which such offense shall have been committed, or to the person injured by such offense, or to the proper authorized agent or officer; and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after he shall have received such notice, to apply for and obtain the proper requisition for the person so committed.

5960 (333). Whenever a **demand** is made upon the governor of this state **by** the **executive of** any **other state** or territory, in any case authorized by the constitution and laws of the United States, for the delivery of any person charged in such state or territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws of the United States or of this state, he shall issue his **warrant** under the seal of the state, authorizing the agent who makes the demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this state, at the expense of such agent, and may also by such warrant require all peace officers to afford needful assistance in in the execution thereof.

5961 (334). The governor of this state may, in any case authorized by the constitution and laws of the United States, appoint **agents to demand of** the executive authority of any **foreign government,** any **fugitive** from justice charged with treason or felony, and the accounts of the agents appointed must be audited by the auditor, and paid out of the state funds.

CHAPTER XXXI.—Search Warrants.

5962 (335). It shall be **lawful** for any magistrate to **issue** warrants to search any house or place: *First*—For property stolen, embezzled, or obtained under false pretenses or tokens. *Second*—For forged or counterfeit coins, stamps, labels, trade marks, bank bills, or other instruments in writing, or for counterfeiting instruments. *Third*—For books, pamphlets, ballads, or printed papers containing obscene language, prints, pictures, or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold or circulated. *Fourth*—For any gaming table, establishment, device or apparatus kept or exhibited for the purpose of unlawfully gaming, and for any money or personal property won by unlawful gaming. *Fifth*—For the body of any deceased person alleged to have been unlawfully removed from its sepulchre or grave.

See **24**, 562 (39 N. W., 600).

5963 (336). No warrant for **search**, as described in the preceeding section, shall be issued until a **complaint** in writing, upon oath, has been filed with the magistrate; such complaint shall be signed by the complainant, and particularly describe the house or place to be searched, the person to be seized, and the things to be searched for, and allege substantially the offense in relation thereto, and that the complainant verily believes that such things are there concealed.

5964 (337). The **warrant** for search shall be directed to the proper officer, and shall **recite,** by reference to the complaint annexed, or otherwise, all the material facts alleged in the complaint, and particularly describe the thing for which the search is to be made, the house or place to be searched, and the person to be seized. It shall **command** the officer to search such house or place in the day time, for the property or other things, and if found to seize and bring the same, together with the person to be seized, before the magistrate, or some other magistrate of the county having cognizance of the same.

5965 (338). If the magistrate is satisfied there is urgent necessity therefor, the warrant may order the **searching** of such house or place **in the night** time.

5966 (339). When the warrant is executed by the seizure of the **property** or things described therein, the same shall be **safely kept** by the magistrate to be used as evidence.

5967 (340). If **upon** the **examination** the magistrate shall be satisfied that the offense set forth in the complaint, in reference to the property, or other thing, seized by the officer, has been committed, it shall be his duty either to keep **possession of** such **property,** or other things, or deliver them to the sheriff of the proper county, there to remain until the case against the offender has been disposed of, or the claimant's right has been otherwise ascertained.

5968 (341). **Upon** the **conviction** of the offender, the **property** stolen, embezzled, or obtained under false pretenses, shall be **returned to** its **owner,** and the other things specified shall be burnt or otherwise destroyed, under the direction of the court; but if the alleged **offender** shall be **discharged,** either before the magistrate or the court before which he is recognized to appear, the property or other things shall be returned to the person in whose possession they were found.

5969 (342). When the person in whose possession money, or other **property won at gambling,** has been found, shall be convicted of any of the offenses of gambling, or winning money, or property by any unlawful gaming, such money or other property shall be **liable** to pay any judgment which may be rendered against such person.

5970 (343). Whenever any **counterfeit coin or instrument for** the purpose of **making** or gilding counterfeit coin shall be taken from the convicts, or persons indicted for counterfeiting, or having the same in possession with criminal intent, and shall remain in the keeping of any county officers, it shall be lawful for the **commissioners** of the proper county to **melt** the said counterfeit coin into a mass, or cast the same into other form than that of coin, **and sell** the same, together with the instruments aforesaid, and pay the avails into the treasury of such county; *Provided*, That said instruments be so mutilated and broken as to prevent their being applied to the purpose of counterfeiting.

5971 (344). When any **property stolen,** embezzled, or obtained under false pretenses, shall, after the trial of the person charged with the larceny, embezzlement, or false obtaining thereof, remain in possession of any officer, **unclaimed** by the owner, for the space of **three months,** the same shall, after public notice in a newspaper printed in the county, be sold at auction to the highest bidder, under the direction of the prosecuting attorney, and the avails thereof paid over to the treasurer of the county for the use of the common schools therein.

5972 (345). In case any **property stolen,** embezzled, or obtained under false pretenses shall remain in the custody of any officer for **one year unclaimed,** as aforesaid, and the thief shall not within that time be taken, or if taken shall escape, it shall be disposed of in like manner and for like purposes as indicated in the preceding section.

CHAPTER XXXII.—Discharge on Bail by Judges.

5973 (346). When any **person charged** with the commission of any bailable offense shall be confined in jail, whether committed by warrant under the hand and seal of any judge or magistrate, or by the sheriff or coroner, under any warrant upon indictment found, it shall be lawful for any judge of the supreme court, judge of the district court within his district, or probate judge within his county, or police judge within the city of his jurisdiction, to admit such person to bail, by **recognizing** such person in such sum and with such securities as to such judge shall seem proper, conditioned for his appearance before the proper court, to answer the offense wherein he may be charged.

Cited, **24**, 388-9 (38 N. W., 837).

5974 (347). For taking such bail, the judge may, by his **special warrant,** under his hand and seal, require the sheriff or jailer to bring such accused before him, at the court house of the proper county, at such time as in such warrant the judge may direct.

5975 (348). In fixing the **amount of bail,** the judge admitting the same shall be governed in the amount and quality of bail required by the direction of the district court in all cases where such court shall have made any order or direction in that behalf.

5976 (349). In all cases when a judge or examining court shall recognize a prisoner under the provisions of the four preceding sections, he shall fortwith **deposit** with the clerk of the proper court the **recognizance** so taken, and also a warrant directed to the jailer requiring him to discharge the prisoner.

CHAPTER XXXIII.—Surrender by Surety.

5977 (350). When any person who is surety in a recognizance for the appearance of any defendant before any court in this state desires to surrender the defendant, he shall, by delivering the said defendant **in open court,** be discharged from any further responsibility on said recognizance; and the said defendant shall be committed by the court to the jail of the county, unless he shall give a new recognizance, with good and sufficient sureties, in such amount as the court may determine, conditioned as the original recognizance.

5978 (351). In all cases of bail for the appearance of any person or persons charged with any criminal offense, the security or securities of such person or persons may, **at any time** before judgment is rendered upon *scire facias* to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid to the sheriff of the county wherein the recognizance shall be taken.

5979 (352). And it shall be the **duty of** such **sheriff,** on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons so charged as aforesaid into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

CHAPTER XXXIV.—Habeas Corpus.

5980 (353). If any **person,** except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be **confined** in any jail of this state, or shall be **unlawfully** deprived of his or her liberty, and shall make **application** either by him or herself, or by any person on his or her behalf, to any one of the judges of the district court, or to any probate judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty forthwith to allow a writ of *habeas corpus,* which writ shall be issued forthwith by the clerk of the district court, or by the probate judge, as the case may require, under the seal of the court whereof the person allowing such writ is judge, directed to the proper officer, person, or persons who detains such prisoner.

It is not to be used as a writ of error. **6,** 310. Petition must state the facts which constitute the illegal restraint. Where ground alleged is want of probable cause, petition should set forth all the testimony taken before the examining magistrate. **13,** 251 (13 N. W., 216). Where examining court has jurisdiction, and it is clearly shown that an offense has been committed, and there is testimony showing that the accused probably committed it, supreme court will not weigh the evidence. **12,** 316 (11 N. W., 312). Party entitled to writ who has been arrested in another state, and, without extradition, brought forcibly into Nebraska and imprisoned. **29,** 138 (45 N. W., 267). Writ not allowed for the discharge of one committed by justice for threats of murder clearly shown to have been made. **24,** 325-6 (38 N. W., 830).

5981 (354). It shall be the duty of the **officer** or person to whom such writ shall be directed to **convey** the **person** or persons so **imprisoned** or detained and named in such writ **before** the **judge** allowing the same, or, in case of his absence or disability, before some other judge of the same court, on the day specified in such writ, and shall make due return of said writ, together with the day and cause of the caption and detention of such person, according to the command thereof.

5982 (355). Whenever a *habeas corpus* shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a **subpœna** to the sheriff of the county where said person shall be confined, commanding him to summon the witness or **witnesses** therein named to appear before such judge or court, at the time and place when and where such *habeas corpus* shall be returnable; it shall be the duty of such sheriff to serve said subpœna, if it be possible, in time to enable such witness or witnesses to attend.

5983 (356). It shall be the **duty of** the witness or **witnesses** thus served with said subpœna to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

5984 (357). On the **hearing** of any *habeas corpus* issued as aforesaid, it shall be the duty of the judge or court who shall hear the same to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense mentioned in the warrant of commitment as aforesaid, whether said offense be technically set out in said commitment or not, and upon which hearing said judge or court may either recommit, bail, or discharge, according to the facts of the case.

5985 (358). When the said judge shall have examined into the cause of the caption and detention of the person so brought before him, and shall be satisfied that the person is unlawfully imprisoned or detained, he shall forthwith **discharge** such prisoner from said confinement. And in case the person or persons applying for such writ shall be confined or detained in a legal manner, on a charge of having committed any crime or offense, the said judge shall, at his discretion, commit, discharge, or let to **bail** such person or persons, and if the said judge shall deem the offense bailable, on the principles of law, he shall cause the person charged as aforesaid to enter into recognizance, with one or more sufficient securities, in such sum as the judge shall think reasonable, the circumstances of the prisoner and the nature of the offense charged considered, conditioned for his appearance at the next court where the offense is cognizable; and said **judge** shall **certify** his **proceedings,** together with the recognizance, forthwith, to the proper court; and if the person or persons charged as aforesaid shall fail to enter into such recognizance, he or they shall be committed to prison by such judge.

5986 (359). If any person to whom such writ of *habeas corpus* shall be directed as aforesaid shall **neglect** or refuse **to obey** or make return of the same according to the command thereof, or shall make a false return of said **writ,** or upon demand made by the prisoner, or any person in his or her behalf, shall refuse to deliver to the person commanding, within six hours after the demand thereof, a true copy of the warrant, or commitment, or detainer of such prisoner, every person so offending shall, for the first offense, forfeit to the party aggrieved the sum of two hundred dollars, and for the second offense the sum of four hundred dollars, and shall, if an officer, be incapable to hold his said office.

5987 (360). If any **clerk** of the district court shall **refuse to issue** such **writ,** after allowance and demand made as aforesaid, he shall forfeit to the party aggrieved the sum of five hundred dollars.

5988 (361). Any **person** who shall be **set at large** upon any *habeas corpus* shall **not** be **again imprisoned** for the same offense, unless by the legal order or process of the court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause or offense. And if any person shall knowingly, contrary to this chapter, recommit or imprison, or cause to be recommitted or imprisoned for the same offense or pretended offense, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved five hundred dollars, any colorable pretense or variation in the warrant or commitment notwithstanding.

5989 (362). If any person of this state shall be committed to prison, or be in custody of any officer for any criminal matter, such **prisoner** shall not be **removed** therefrom **into** the **custody of** any **other officer,** unless by legal process, or when the prisoner shall be delivered to some inferior officer to carry to jail, or shall, by order of the proper court, be removed from one place to another within the state, for trial, or in case of fire, infection, or other necessity; and if any person, after such commitment, shall make out, or sign, or countersign, any warrant for such removal, contrary to this chapter, he or she shall, for every such offense, forfeit to the party aggrieved five hundred dollars.

5990 (363). When any person shall appear to be committed by any judge or magistrate, and charged as **accessory** before the fact **to** any **felony,** the punishment whereof is **capital,** which **felony** shall be plainly and specially charged in the warrant of commitment, such person shall **not** be **removed or bailed** by virtue of this chapter, or in any other manner than as if this chapter had not been enacted.

5991 (364). **No citizen** of this state, being an inhabitant or resident of the same, shall be **sent a prisoner** to any place whatever **out of the state,** for any crime or offense committed within this state, except in cases specially authorized by law, and every such imprisonment is hereby declared to be illegal. And if any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to law, and against any person who shall contrive, write, seal, sign, or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same, or any of them, and shall recover triple costs besides damages, which damages so to be given shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this chapter, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this state; *Provided,* That if any citizen of this state, or any person or persons at any time resident in the same, shall have committed, or shall be charged with having committed, any treason, felony, or misdemeanor, in any other part of the United States or territories where he or she ought to be tried for such offense, he, she, or they may be sent to the state or territory having jurisdiction of the offense.

5992 (365). The **penalties** in this chapter made recoverable shall be **recovered** by the party aggrieved, his or her executors or administrators, **by civil action** in any court having cognizance of the same; *Provided,* That no person shall be sued or molested for any offense against this chapter, unless within two years after the time when such offense shall have been committed; but if the party aggrieved shall then be in prison, then within two years after the decease of the person imprisoned, or his or her delivery out of prison. And in every such action it shall be lawful for the defendant to plead the general issue, and give the special matter in evidence.

5993 (366). If any person shall be committed to prison, or be in custody of any officer for any criminal matter, by virtue of any warrant or commitment of any magistrate of this state having jurisdiction of such **criminal** matter, such person shall **not** be **discharged** from such imprisonment or custody **by** reason of any **informality** or defect of such warrant or commitment; *Provided,* Such warrant or commitment shall show substantially a criminal matter for which such magistrate had jurisdiction so to arrest or commit.

If affidavit for arrest tends to show a cause for arrest, defendant not discharged on *habeas.* 17, 436 (23 N. W., 361).

5994 (367). In case of confinement, imprisonment, or detention by any person not a sheriff, deputy sheriff, coroner, jailer, constable, or marshal of this state, nor a marshal or other like officer of the courts of the United States, the **writ** of *habeas corpus* shall be in the **form** following: * The State of Nebraska, —— County, ss. The state of Nebraska to the sheriff of said county, greeting: We command you, that the body of ——, of ——, by ——, of —— imprisoned and restrained of his liberty, as it is said, you take and have before ——, a judge of our —— court —— or, in case of his absence or disability, before some other judge of the same court at ——, forthwith to do and receive what our said judge shall then and there consider —— concerning him in his behalf, and summon the said —— then and there to appear before our said judge to show the cause of the taking and detaining the said

——; and have you there this writ with your doings thereon. Witness ——, at ——, this —— day of ——, in the year ——. [Seal.] ——

5995 (368). Such **writ** may be **served** in any county by any sheriff of the same or of any other county. When such writ shall be issued by a court in session, if such court shall have adjourned when the same is returned, it shall be **returned** before any judge of the same court, and if such writ is returned before one judge at a time when the court is in session, he may adjourn the case into the court, there to be heard and determined.

5996 (369). The **person having** the custody of the **prisoner** may, in all writs of *habeas corpus* issued under this chapter, be **designated** by his name of office, if he have any, or by his own name; or, if both such names are unknown or uncertain, he may be described by an assumed appellation, and any person who is served with the writ shall be deemed the person intended thereby.

5997 (370). The **person to be produced** shall be **designated** by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

5998 (371). In cases other than those provided for by the first section of this chapter the person who makes the **return shall state** therein, and in the cases provided for in this chapter the person in whose custody the prisoner shall be found shall state in writing to the court or judge before whom the writ is returned, plainly and unequivocally: *First*—Whether he has or has not the party in his custody or power, or under restraint. *Second*—If he has the party in his custody or power, or under restraint, he shall set forth at large the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained. *Third*—If he has had the party in his custody or power, or under restraint, and has transfered such custody or restraint to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

5999 (372). The **return** or statement shall be **signed** by the person making it, **and** it shall be **sworn to** by him, unless he is a public officer, and shall make the return in his official capacity.

6000 (373). Upon the **return** of any writ of *habeas corpus*, issued as aforesaid, if it shall appear that the person detained or imprisoned is in custody, under any warrant of commitment in pursuance of the law, the return shall be considered **as** *prima facie* **evidence** of the cause of detention; but if the person so imprisoned or detained is restrained of liberty by any alleged private authority, the return of said writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts; and upon the final disposition of any case arising upon a writ of *habeas corpus*, the court or judge determining the same shall make such order as to **costs** as the case may require.

6001 (374). When any writ of *habeas corpus* shall have been allowed, the **court** or judge to which the same shall be returned, or into which it shall be adjourned, shall, for good cause shown, **continue** the said **cause**, and shall make order for the safe keeping of the person imprisoned, or detain him, as the nature of the case may require.

6002 (375). The **proceedings** upon any writ of *habeas corpus* shall be **recorded** by the clerks and judges respectively, and may be **reviewed**, and writs of error and *certiorari* may issue as in other cases now provided by law.

6003 (376). The probate judges of the several counties of this state shall be allowed the sum of two dollars for every allowance of the writ of *habeas corpus*, and the hearing and determining of the case upon the return of such writ, which sum, together with the **fees** of the clerk, sheriff, and witnesses in the case, shall be taxed by such probate judge on his return of his proceedings on such writ, and the same, when the person brought before such judge on such writ was in custody by virtue of the proceedings in any case in which such person is charged or attempted to be charged with the commission of any criminal offense, and when such person shall either be held to bail, or shall be remanded to custody by such judge, shall be taxed and collected as part of the original cost in such case; but when such person shall be wholly discharged by such judge, such costs shall be taxed to the state, and paid out of the county treasury of the proper county, upon the order of the county commissioners; *Provided*, That no person or officer shall have the right to demand the **payment** in advance of any fees which such person or officer may be entitled to by virtue of such proceedings on *habeas corpus*, when such writ shall have been issued or demanded for the discharge from custody of any person confined under color of proceedings in any criminal case.

CHAPTER XXXV.—Custody of Prisoners.

6004 (377). Whenever it shall be lawful and necessary to confine any prisoner in custody previous to conviction upon a criminal accusation, or in custody for contempt, or alleged contempt of court, or upon an attachment by order of a court or judge, or otherwise in lawful custody, or upon conviction for any offense, *and there shall be no secure jail in the proper county, the officer or person having him in such custody may convey him to, and **confine** him **in** the **jail of any county** in the state, or other secure and convenient place of confinement in the state, to be procured by such officer or person having such prisoner in custody.

* to * inserted 1875, p. 17. Money received by sheriff for such service is received in an official capacity. **15**, 138 (17 N. W., 346). See **5**, 41.

6005 (378). The **cost** of keeping and **maintaining** any prisoner **after** his **conviction** of any offense punishable by imprisonment in the penitentiary, wherever he may be kept and confined, shall be paid by the state, according to the rate which may be established by law at the time when such services may be rendered or expenses incurred; *Provided*, The rate so established shall not be construed to apply to any contract which the governor may make for the confinement of convicts in the penitentiary of a state.

Wording corrected, 1875, p. 132.

6006 (379). The **auditor** of the state shall **allow** the **account** for the costs provided for in the last section, and draw warrants upon the treasury therefor, upon being furnished with a certified copy of the judgment or sentence of the court under which such convict is imprisoned, and an account, verified by affidavit, showing where and how long such convict has been kept, pursuant to such sentence.

6007 (380). The **costs** of keeping and maintaining any prisoner **previous to** his **conviction** of an offense punishable by imprisonment in the penitentiary, or either before or after his conviction of an offense not so punishable, or when he shall not be convicted of any offense, shall be paid by the county in which the offense may be committed, or alleged to have been committed.

6008 (381). Every **county attached** for judicial purposes **to another** county shall be **liable for costs** heretofore or hereafter incurred in the prosecution of any person accused of the commission of an offense within the county so attached, and for costs in any other judicial proceeding originating therein, to the same extent, and on the same conditions, as if such prosecution were carried on or such proceedings were had within such county so attached; *Provided*, That the fees of jurors shall be paid by the county from which they may be drawn.

6009 (382). The **costs** to be paid under this chapter, by any county, shall be such as may be provided by law at the time when the services may be rendered or the expenses incurred, and shall be **allowed** by the commissioners of the proper county, upon the **certificate** of the clerk of the district court that such costs have been taxed by him or by the court, and are chargeable upon such county.

CHAPTER XXXVI.—Filing and Record of Recognizance.

6010 (383). Whenever a transcript or recognizance shall be returned to the **clerk,** it shall be his **duty** to enter the cause upon the appearance docket of the court, together with the date of the filing of the transcript and recognizance, the date and amount of the recognizance, the names of the sureties and the costs; whereupon the same shall be considered as of record in such court and proceeded on by process issuing out of said court, in the same manner as if such recognizance had been entered into before such court; and when any court, having cognizance of a crime, shall take a recognizance, it shall be a sufficient record thereof on the journal of such court, to enter upon the journal the title of the cause, the crime charged, the name of the party and his sureties thereto, the amount of such recognizance, and the time therein required for the appearance of the accused, and the same shall be considered as of record in such court; but in making up the complete record in any case, when one is required to be made, all recognizance, whether returned to or taken in such court, shall be recorded in full, if required by the prosecuting attorney or the accused.

Recognizance becomes a valid obligation when taken by justice and returned into district court. **18,** 383 (25 N. W., 519). Recognizance in bastardy proceeding valid against security though not entered on docket. **24,** 104-5 (38 N. W., 29). Omission of docket entries may be corrected by *nunc pro tunc* order. **24,** 105 (38 N. W., 29). Cited, **24,** 390.

CHAPTER XXXVII.—Proceedings Upon Forfeiture of Recognizance.

6011 (384). **When** any person under recognizance in any criminal prosecution, either to appear and answer, or testify in any court, shall fail to perform the conditions of such recognizance, his default shall be recorded, and the recognizance **forfeited** in open court.

6012 (385). Whenever such recognizance shall have been forfeited as aforesaid, it shall be the **duty of** the **prosecuting attorney** of the county in which the recognizance was taken, to prosecute the same by civil action for the penalty thereof; and such action shall be governed by the provisions of the code of civil procedure, so far as the same may be applicable.

Money forfeited by one recognized to appear in district court of county to which venue has been changed, belongs to such county. **24,** 390-1 (38 N. W., 837).

6013 (386). The **court** in which the action for the penalty of any forfeited recognizance is brought **may** remit or **reduce** any part or the whole of such **penalty,** and may render judgment thereon according to the circumstances of the case and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

6014 (387). Whenever any judgment shall have been rendered against the defendants for the whole or any part of the penalty of a forfeited recognizance, as aforesaid, the **court rendering** said **judgment** shall have **power to** remit or **reduce** the amount thereof, when it shall be made to appear that after the rendition thereof the accused had been arrested and surrendered to the proper court, to be tried on such charge.

6015 (388). **No action** brought **on** any **recognizance** shall be barred or **defeated,** nor shall judgment thereon be reversed by reason of any neglect or omission to note or record the default, nor by reason of any defect in the form of the recognizance if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear and that the court or officer before whom it was taken was authorized by law to require and take such recognizance.

CHAPTER XXXVIII.—Discharge from Custody or from Recognizance.

6016 (389). Any person held in jail charged with an indictable offense shall be discharged if he be not indicted at the term of the court at which he is held to answer, unless such person shall have been committed to jail on such charge after the rising and final report of the regular grand jury for said term, in which case the court in its discretion may discharge such person or order a new grand jury, as provided in section four hundred and five, or require such person to enter into recognizance with sufficient security for his appearance before said court to answer such charge at the next term thereof; *Provided*, That such person so held in jail without indictment shall not be discharged, if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away or are detained and prevented from attending court by sickness or some inevitable accident.

Where the witnesses on the part of the state have not been prevented from attending court, and no indictment has been found against the accused, at the term at which he is held to answer, he should be discharged. 11, 221 (9 N. W., 44).

6017 (390). If any person indicted for any offense and committed to prison shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense, which shall be held after such indictment found, he shall be entitled to be discharged, so far as relates to the offense for which he was committed, unless the delay shall happen on application of the prisoner.

6018 (391). If any person indicted for any offense, who has given bail for his appearance, shall not be brought to trial before the end of the third term of the court in which the cause is pending, held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offense, unless the delay happen to be on his application, or be occasioned by the want of time to try such cause at such third term.

6019 (392). If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied there is material evidence on the part of the state, which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued, and the prisoner remanded or admitted to bail, as the case may require.

CHAPTER XXXIX.—Grand Jury.

6020 (393). Before the first day of each term of a court at which a grand jury shall be summoned to appear, the clerk of said court shall make out two lists, on which he shall enter the names of all persons who appear, by the returns of the magistrates, to have been either committed or bailed for an offense during the vacation of such court, the name of the magistrate who committed or bailed, and distinguishing whether such person was committed or bailed; one of these lists shall be delivered by the judge to the foreman of the grand jury, and the other, together with all the transcripts and other documents returned by the magistrates, shall be delivered to the prosecuting attorney.

6021 (394). When the grand jury shall be impaneled in the manner provided by law, the court shall appoint one of the number foreman.

6022 (395). When the **foreman** shall be appointed, an **oath** or affirmation shall be administered to him in the following words: "Saving yourself and fellow jurors, you, as foreman of this grand inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service. The counsel of the state, your own, and your fellows', you shall keep secret, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred, or ill-will, nor shall you leave any person unpresented through fear, favor, or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding."

6023 (396). Thereupon the following **oath** or affirmation shall be **administered to the other grand jurors**: "The same oath which A. B., your foreman, hath now taken before you on his part, you, and each of you, shall well and truly observe and keep on your respective parts."

6024 (397). The **grand jury,** after being sworn, shall be **charged** as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he is by law required to specially charge.

6025 (398). After the charge of the court, the grand jury shall **retire** with the officer appointed to attend to them, and shall proceed **to inquire** of and present all offenses whatever committed within the limits of the county in and for which they were impaneled and sworn or affirmed.

6026 (399). The **prosecuting attorney** or the assistant prosecuting attorney shall be allowed at all times to **appear before** the grand jury for the purpose of giving information relative to any matter cognizable by them, or giving them advice upon any legal matter they may require, and he may interrogate witnesses before them when they or he shall deem it necessary; but no other person shall be permitted to remain in the room with said jury while they are expressing their views or giving their votes on any matter before them.

6027 (400). Whenever required by the grand jury, or the prosecuting attorney, the **clerk** of the court in which such jury is impaneled shall **issue subpœnas** and other process to bring witnesses to testify before such grand jury.

6028 (401). Before any **witness** shall be examined by the grand jury, an **oath** or affirmation shall be administered to him, truly to testify of such matters and things as may be lawfully required of him before said jury, which oath or affirmation may be administered either by the foreman of said jury or by the clerk of the proper court.

Amended 1875, p. 17.

6029 (402). If any **witness** appearing before a grand jury shall **refuse to answer** any interrogatories during the course of his examination, the fact shall be communicated to the court in writing, in which the question refused to be answered shall be stated, together with the excuse for the refusal, if any be given by the person interrogated; and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

6030 (403). If the court determine that the **witness is bound to answer,** and he persist in his **refusal,** he shall be brought before the court, who shall proceed in the same manner as if the witness had been interrogated and refused to answer in open court.

6031 (404). In case of the sickness, death, discharge, or **non-attendance of**

any grand juror, after the grand jury shall be affirmed or sworn, it shall be lawful for the court, at their discretion, to cause another to be sworn or affirmed in his stead.

6032 (405). After the discharge of the grand jury, it shall be lawful for the court, when it shall be deemed necessary, to order the sheriff to call together a **new grand jury** from the bystanders or neighboring citizens, of sixteen good and lawful men, having the qualifications of grand jurors, who shall be returned and sworn or affirmed, and shall proceed in the same manner in all respects as provided by law in respect to grand juries.

After discharge of regular panel, court may order a new one summoned. 14, 538 (17 N. W., 117).

6033 (406). **No** grand juror or **officer** of the court shall **disclose** that an **indictment** has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed and the case docketed.

6034 (407). **No grand juror** shall be allowed to **state** or testify in any court **in what manner** he or other **members** of the grand jury **voted** on any question before them, or what opinion was expressed by any juror in relation to such question.

6035 (408). At least twelve of the grand jurors must concur in the **finding** of an **indictment;** when so found the foreman shall endorse on such indictment the words "A true bill," and subscribe his name thereto as foreman.

6036 (409). The grand jury shall, once at each term of the court at which they may be in attendance, **visit** the county **jail,** examine and report its condition as required by law.

6037 (410). **Indictments** found by a grand jury shall be **presented** by their foreman to the court, and shall be **filed** with the clerk, who shall endorse thereon the day of their filing, and shall enter each case upon appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested.

6038 (411). The court shall **assign** said **indictments** for trial at as early a time in such term as is practicable, and the recognizances of parties and witnesses shall, in such causes, be taken for their appearance at the time so assigned; and in case of the **continuance** of any cause to the next term of the court, such recognizances shall be for the appearance of the parties and witnesses on such day thereof as the court may direct; and at the end of the term the clerk shall deliver the indictments undisposed of to the prosecuting attorney for safe keeping.

CHAPTER XL.—OF INDICTMENTS.

6039 (412). **No** indictment shall be deemed invalid, nor shall the trial, judgment, or other **proceedings** be stayed, arrested, or in any manner **affected:** *First*—By the omission of the words "with force and arms," or any words of similar import; or, *Second*—By omitting to charge any offense to have been contrary to a statute or statutes; or, *Third*—For the omission of the words, "as appears by the record," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a statement of the value or price of any matter or thing or the amount of damages, or injury, in any case where the value or price, or the amount of damages, or injury is not of the essence of the offense; nor for the want of an allegation of the time or place of any material fact, when the time and place have once been stated in the indictment; nor that dates and numbers are represented by figures; nor for an omission to allege that the grand jurors were impaneled, sworn, or charged; nor for any surplusage or repugnant allegation when there is sufficient matter alleged to indicate the crime or person charged, nor for want of the averment of any matter not necessary to be proved; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Descriptive averments in an indictment must be proved as alleged. **22,** 676 (36 N. W., 295). Defective indictment may be withdrawn and information charging same offense substituted. **24,** 100 (38 N. W., 36). Omission of word "chosen" not fatal. Mere surplusage in an indictment will not vitiate it. Reading of indictment may be waived in court by counsel for prisoner. **1,** 370 Time is only material to bring the offense within the statute of limitations. **16,** 660 (21 N. W., 454). Time and place once stated need not be repeated. **9,** 64 (2 N. W., 381). Prosecutor not compelled to elect which count he will proceed upon in an indictment charging prisoner with shooting with intent to kill and shooting with intent to wound. **8,** 486. On charge of stealing from a corporation, articles of incorporation need not be introduced. **28,** 835 (45 N. W., 247). Cited, **2,** 162.

6040 (413). Whenever on trial of any indictment for any offense there shall appear to be any variance between the statement in such indictment, and the evidence offered in proof thereof in the Christian name or surname, or both Christian and surname, or other description whatever of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had shall find that such variance is material to the merits of the case or may be prejudicial to the defendant.

Name of witness alleged to be John M. Thayer, shown to be Jeremiah; variance fatal. **27,** 745 (43 N. W., 747; 44 N. W., 108). See **16,** 672 (21 N. W., 455).

6041 (414). In any indictment for falsely making, altering, forging, printing, photographing, uttering, disposing of or putting off any instrument, it shall be sufficient to set forth the purport and value thereof.

6042 (415). In any indictment for engraving or making the whole or any part of any instrument, matter, or thing, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter, or thing shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter, or thing shall have been made or printed, it shall be sufficient to describe such instrument, matter, or thing by any name or designation by which the same may be usually known.

6043 (416). That in all other cases whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof.

6044 (417). It shall be sufficient in any indictment where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud without alleging an intent to defraud any particular person or body corporate, and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with the intent to defraud.

6045 (418). When any offense shall be committed upon or in relation to any property belonging to several partners or owners, the indictment for such offense shall be deemed sufficient if it allege such property belonged to any one or more of such partners or owners, without naming all of them.

6046 (419). An indictment for larceny may contain also a count for obtain-

ing the same property **by false pretenses,** or a count for **embezzlement** thereof, and for receiving or concealing the same property, knowing it to have been stolen; and the **jury may convict of either** offense, and may find all or any of the persons indicted guilty of either of the offenses charged in the indictment.

6047 (420). In every indictment in which it shall be necessary to make any **averment as to** any **money,** or bank bill, or notes, United States treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money or bills, notes, currency, or bonds, simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof of any amount of coin or of any such note, bill, currency, or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency, or bond shall not be proved.

6048 (421). When an offense shall be committed in relation to any **election,** an indictment for such **offense** shall be deemed sufficient if it allege that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filled at such election.

6049 (422). That in every indictment for **perjury** or **subornation** of perjury it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have full power to administer the same, together with the proper averment or counts to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of any record or proceeding, in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed.

Sufficiency of affidavit. **23**, 442 (36 N. W., 817).

6050 (423). Whenever any person shall be liable to prosecution as the **receiver of** any personal **property** that shall have been feloniously **stolen,** taken, or embezzled, he may be **indicted** in any county **where** he received or had such property, notwithstanding the theft was committed in another county.

6051 (424). When an **offense** shall be **committed on** a **county line,** the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

6052 (425). In any indictment for **manslaughter,** it shall not be necessary to set forth the manner in which, or the means by which, the death was caused; but it shall be sufficient to charge that the defendant did unlawfully kill and slay the deceased.

CHAPTER XLI.—Arrest and Its Incidents After Indictment.

6053 (426). A **warrant** may be issued in term time or vacation of the court, on an indictment found or presentment made in any county, and when directed to the sheriff of the county where such indictment was found, or presentment made, it shall be lawful for such officer to pursue and **arrest** the accused named in such warrant, in any county of this state where he may be found, and commit him to jail, or hold him to bail, as provided in this code.

6054 (427). **When** the party **accused** shall **reside out of** the **county** in which such indictment was found, it shall be lawful to issue a warrant thereon, directed to the sheriff of the county where the accused shall reside or may be found; and it shall be the duty of such officer to arrest the accused and convey him to the county from which such writ was issued, and there commit him to the jail of said county, or hold him [to bail], as provided in the preceding section.

6055 (428). When any **sheriff** or other officer shall be charged with the execution of a warrant issued on any indictment for a misdemeanor, he shall, **during** the **vacation** of the court from which the writ issued, have authority to **take** the **recognizance** of the person so indicted, together with sufficient sureties, resident and freeholders in the county from which such writ issued, in a sum of not less than fifty nor more than five hundred dollars, conditioned for the appearance of such person on the first day of the next term of such court.

Duties of sheriff in accepting sureties. **22,** 691 (36 N. W., 118).

6056 (429). The sheriff or other officer shall **return** the said writ according to the command thereof, with the name of the surety or sureties, together with the **recognizance** taken as aforesaid; and the recognizance so taken and returned shall be **filed** and recorded by the clerk of the court to which the same was returned, and may be proceeded on in the same way as if such recognizance had been taken in said court during term time.

6057 (430). When any **person** shall have been **indicted for a felony,** and the person so indicted shall not have been arrested or **recognized** to appear before the court, the court may, at their discretion, make an entry of the cause on their journal, and may order the amount in which the party [indicted] may be recognized for his appearance by any officer charged with the duty of arresting him.

Taken before sheriff void as a common law obligation. **20,** 81 (29 N. W., 184).

6058 (431). The **clerk** issuing a warrant on such an indictment shall **endorse** thereon the **sum** in which the recognizance of the accused was ordered as aforesaid to be taken.

6059 (432). The officer charged with the execution of the warrant aforesaid shall take the **recognizance** of the party accused in the sum ordered as aforesaid, together with good and sufficient sureties, conditioned for the appearance of the accused at the return of the writ before the court out of which the same issued; and such officer shall **return** such recognizance to the said court, to be recorded and proceeded on as provided in this code.

6060 (433). **All recognizances** taken during vacation of any court, by any judge or other officer thereof authorized to take them, shall be **signed** and sealed by the parties, **and certified** to by the officer taking the same.

6061 (434). Whenever any **convict** in the penitentiary shall be **indicted** for any offense committed **while confined** therein, said convict shall remain in the custody of the warden of said penitentiary, subject to the order of the district court of the county where the penitentiary, in which such convict is confined, is situate.

CHAPTER XLII.—MOTIONS AND ISSUES UPON THE INDICTMENT.

6062 (435). If there be at any time pending against the same defendant **two** or more **indictments for** the **same** criminal **act,** the prosecuting attorney shall be required to elect upon which he will proceed; and upon trial being had thereon the remaining indictment shall be quashed.

Information charging same offense as defective indictment may be substituted for latter. **24,** 100 (38 N. W., 36).

6063 (436). The clerk of the district court shall, upon the filing of any **indictment** with him, and after the person indicted is in custody or let to bail, cause the same to be **entered of record** on the journal of said court, and in case of the loss of the original, such record or a certified copy thereof shall be used in the place thereof upon the trial of the cause. And * within twenty-four (24) hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and **deliver** to the sheriff, the **defendant** or his counsel, **a copy** of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant; and no one shall be, without his assent, arraigned or called on to answer to any indictment until one day shall have elapsed, after receiving in person or by counsel, or having an opportunity to receive a copy of such indictment as aforesaid.

All before * added and section otherwise amended 1877, p. 4. In force June 1.

6064 (437). The **court** before whom any person shall be indicted for any offense which is capital, or punished by imprisonment in the penitentiary, is hereby authorized and required to **assign** to such person **counsel** not exceeding two, if the prisoner has not the ability to procure counsel, and they shall have full access to the prisoner at all reasonable hours; and it shall not be lawful for the county clerk or county commissioners of any county in the state to audit or allow an account, [bill], or claim hereafter presented by an attorney or counselor at law for services performed under the provisions of this section, until said account, bill, or claim shall have been examined and allowed by the court before whom said trial is had, and the amount so allowed for such services certified by said court; *Provided*, That no such account, bill, or claim shall in any case, except in cases of homicide, exceed one hundred dollars.

Certificate of judge allowing amount is not conclusive on county board. **23,** 766 (37 N. W., 626). Cited, **14,** 19 (14 N. W., 549).

6065 (438). The court shall **allow** the **accused** a reasonable **time** to examine the indictment and prepare exceptions thereto.

6066 (439). The accused may **except to** an **indictment** by: *First*—A motion to quash. *Second*—A plea in abatement. *Third*—A demurrer.

6067 (440). A **motion to quash** may be made in all cases when there is a defect apparent upon the face of the record, including defects in the form of the indictment or in the manner in which an offense is charged.

On motion to quash where crime alleged is same as in complaint before magistrate, district court will not inquire into validity of latter. **24,** 99 (38 N. W., 36).

6068 (441). A **plea in abatement** may be made when there is a defect in the record, which is shown by facts extrinsic thereto.

Plea on ground that grand jury was not legally selected and chosen must point out the particular cause of illegality. **12,** 61 (10 N. W., 463).

6069 (442). The accused may **demur** when the facts stated in the indictment do not constitute an offense punishable by the laws of this state, or when the intent is not alleged, when proof of it is necessary to make out the offense charged.

6070 (443). When a motion to quash, or a **plea** in abatement has been **adjudged in favor of** the **accused,** he may be committed or held to bail in such sum as the court may require for his appearance at the first day of the next term of said court.

6071 (444). The accused shall be **taken to have waived** all **defects** which may be excepted to by a motion to quash, or a plea in abatement, by demurring to an indictment or pleading in bar, or the general issue.

6072 (445). If the accused shall plead in abatement that he is **not indicted by** his **true name,** he must plead what his true name is, which shall be entered on the minutes of the court, and after such entry the trial and all other proceedings on the indictment shall be had against him by that name, referring also to the name by which he is indicted, in the same manner in all respects as if he had been indicted by his true name.

6073 (446). To any **plea in abatement** the prosecuting attorney may **demur** if it is not sufficient in substance, or he may **reply,** setting forth any facts which may show that there is no defect in the record as charged in the plea.

6074 (447). After a **demurrer** to an indictment has been **overruled,** the accused may plead "not guilty," or in bar.

6075 (448). The **accused** shall be **arraigned** by reading to him the indictment, unless, in cases of indictments for misdemeanors, the reading shall be waived by the accused by the nature of the charge being made known to him, and he shall then be asked whether he is guilty or not guilty of the offense charged.

6076 (449). The accused may then offer a **plea in bar** to the indictment that he has before had judgment of acquittal, or been convicted, or been pardoned for the same offense; and to this plea the prosecuting attorney may **reply** that there is no record of such acquittal or conviction, or that there has been no pardon; and on the **trial** of such issue to a jury the accused must produce the record of such conviction or acquittal, or the pardon, and prove that he is the same person charged in the record, or mentioned in the pardon; and shall be permitted to adduce such other evidence as may be necessary to establish the identity of the offense.

Plea of former conviction should show that the court had jurisdiction of the alleged offense. **6,** 107. A demurrer may be interposed to plea in bar. Jury impaneled and discharged on account of defect in indictment not good in bar. **16,** 133 (19 N. W., 628); **25,** 809 (41 N. W., 792).

6077 (450). No **plea** in bar or abatement shall be received by the court unless it **be** in **writing,** signed by the accused, and sworn to before some competent officer.

6078 (451). If the issue on the plea in bar be found against the defendant, or if upon the arraignment the accused offer no plea in bar, he shall **plead "guilty" or "not guilty;"** but if he plead evasively, or stand mute, he shall be taken to have plead "not guilty."

6079 (452). If the accused plead "**guilty,**" the **plea** shall be **recorded** on the indictment, and the accused shall be placed in custody of the sheriff until sentence.

Failure to endorse plea on indictment not fatal. **5,** 380.

6080 (453). If the accused plead "**not guilty,**" the **plea** shall be **entered** on the indictment, and the prosecuting attorney shall, under the direction of the court, designate a day for **trial,** which shall be a day of the term at which the plea is made, unless the court for good reasons continue the case to a subsequent term.

6081 (454). A person that becomes **lunatic** or insane after the commission of a crime and misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment is pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person shall become lunatic or insane, then, in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all such cases it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of the impaneling, insane or lunatic.

CHAPTER XLIII.—CHANGE OF VENUE.

6082 (455). All criminal cases shall be tried in the county where the offense was committed unless it shall appear to the court by **affidavits** that a fair and impartial trial cannot be had therein, in which case the court may direct the person accused to be tried in some adjoining county.

Change of venue discretionary with the court. **4,** 286. Power to order change confined to district court of county where crime is committed. **27,** 720 (43 N. W., 747; 44 N. W., 108). It should be made to appear to the court by affidavits that a fair and impartial verdict cannot be had in county where offense was committed. **5,** 380.

6083 (456). When the venue is changed to an adjoining county, the clerk of the court in which the indictment was found shall make a certified **transcript** of all the proceedings in the case, which, together with the original indictment, he shall transmit to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. All **costs**, fees, charges, and expenses accruing from a change of venue, together with all costs, fees, charges, and expenses made or incurred in the trial of, or in keeping, guarding, and maintaining the accused, shall be paid by the county in which the indictment was found, and the clerk of the trial court shall make a statement of the costs, fees, charges, and expenses aforesaid, and certify and transmit the same to the clerk of the district court where the indictment was found, to be by him entered upon his docket and collected and paid as if a change of venue had not been had.

Amended 1883, p. 329; 1887, p. 667. The expenses of the county in which the cause is tried, including jurors, bailiffs, use of court room, etc., are not costs to be borne by the county where indictment is found. **10,** 308 (4 N. W., 1055). Money forfeited by one recognized to appear in district court of county to which venue has been changed, belongs to such county. **24,** 390–1 (38 N. W., 837).

6084 (457). When a court has ordered a change of venue, a **warrant** shall be issued by the clerk, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailer thereof until discharged by due course of law.

6085 (458). When a change of venue is allowed, the **court** shall **recognize** the **witnesses** on the part of the state to appear before the court in which the prisoner is to be tried.

CHAPTER XLIV.—Preparation for Evidence.

6086 (459). In all criminal cases it shall be the duty of the clerk, upon a precipe being filed, to issue writs of **subpœna** for all witnesses named therein, directed to the sheriff of his county or of any county of the state where the witnesses reside or may be found, which shall be served and returned as in other cases; and such sheriff, by writing endorsed on said writs, may depute any disinterested person to serve and return the same.

6087 (460). If the **subpœna** be served by such special deputy, it shall be his duty, after serving the same, to **return** thereon the manner in which the same was served, and also make oath or affirmation to the truth of said return, before some person competent to administer oaths, which shall be endorsed on such writ, and the same shall be returned according to the command thereof by the person serving the same **through** the post office or otherwise.

Cited **24,** 719 (40 N. W., 302).

6088 (461). Any person accused of crime amounting to felony shall have compulsory process to enforce the attendance of **witnesses in** his **behalf,** and they shall be paid for their mileage and per diem the same fees as are now, or may hereafter be allowed by law, to witnesses for the state in the prosecution **of** such **accused** person, and in case such accused person is convicted and is unable to pay such mileage and per diem to his witnesses, they shall be paid out of the county treasury of the county wherein such crime was committed; and in case such accused person is acquitted upon his trial, the fees of his witnesses shall be likewise paid out of such county treasury; *Provided, however,* That in no case shall the fees of any such witnesses be so paid, unless before the trial of such accusation such accused person shall make and file his affidavit stating the names of his witnesses, and that he has made a statement to his counsel of the facts he expects to prove by such witnesses, and has been advised by such counsel that their testimony is material on the trial of such accusation, and shall also file an affidavit of such counsel that he deems the testimony of such witnesses necessary and material on behalf of such accused person, whereupon the court or judge shall make an order directing that such witnesses, not exceeding fifteen in number, be paid out of the county treasury of the county in which such accusation shall be made.

Rewritten 1885, p. 395.

6089 (462). Where any issue of fact is joined on any indictment, and any material **witness** for the defendant resides out of the state, or residing in the state, is sick or infirm, or is **about to leave** the **state** such defendant may apply in writing to the court in term time, or the judge thereof in vacation, for a commission to examine such witness upon interrogatories thereto annexed, and such court or judge may grant the same, and order what and for how long a time notice shall be given to the prosecuting attorney before the witness shall be examined.

22, 358 (35 N. W., 194).

6090 (463). The **proceedings** in taking the examination of such witness and returning it to the court shall be governed in all respects **as** the taking of depositions **in** all **civil cases.**

CHAPTER XLV.—TRIAL OF INDICTMENTS.

6091 (464). No **person indicted** for a felony shall be tried unless personally **present** during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court, be put on trial in their absence. The request shall be in writing, and entered on the journal of the court.

Prisoner must be present at his his trial. **4,** 226. Cannot waive this right. **1,** 391. Arguments on motions and demurrers, before commencement of trial, may be heard in absence of accused. **29,** 441 (45 N. W., 451). If statutory requirement not complied with, judgment will be reversed. **4,** 233. Presence of prisoner necessary at the place where the homicide was alleged to have been committed. **5,** 353.

6092 (465). When two or more **persons** are **indicted for felony,** each person so indicted shall, on application to the court for that purpose, be **separately tried,** *and every person charged with felony shall be furnished, previous to his trial, with a copy of the indictment, and at his request, with a list of the witnesses upon whose testimony the indictment was found.

All after * added 1875, p. 17.

Sec. 6093. "An act to provide for a special venire in certain cases." 1881, p. 213. In force February 28.

6093. That when two or more **persons** shall have been **charged** together in the same indictment or information with a crime, and one or more shall have demanded a **separate trial,** and had the same, and when the court shall be satisfied, by reason of the same evidence being required in the further trial of parties to the same indictment or information, that the **regular panel** and bystanders are **incompetent** because of having heard the evidence, to sit in further causes in the same indictment or information, then it shall be lawful for the court to require the clerk of the court to write the names of sixty electors of the county wherein said cause is being tried, each upon a separate slip of paper, and place the same in a box, and after the same shall have been thoroughly mixed, to draw therefrom such a number as in the opinion of the court will be sufficient from which to select a jury to hear said cause, and the electors whose names are so drawn shall be summoned by the sheriff to forthwith appear before the court, and after having been examined, such as are found competent and shall have no lawful excuse for not serving as jurors shall constitute a **special venire** from which the court shall proceed to have a jury impaneled for the trial of the cause, and the court may repeat the exercise of this power until all the parties charged in the same indictment or information shall have been tried.

6094 (466). In all [criminal] cases, except as may be otherwise expressly provided, the **jury** summoned and impaneled according to the provisions of the laws in force relating to the summoning and impaneling of juries in other cases, shall try the accused.

Jurors are not judges of the law. **14,** 63 (15 N. W., 357).

6095 (467). Every person arraigned for any crime punishable with death shall be admitted, on his trial, to a **peremptory challenge** of sixteen jurors, and no more; and every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the state shall be admtted to a peremptory challenge of six jurors, in all cases where the offense charged is punishable with death, and of three jurors in all other cases.

Prisoner waiving his challenge cannot object to a disqualified juror when he knew of such disqualification at the time. **4,** 74; **21,** 436 (32 N. W., 213). Error in overruling challenge for cause, of one shown to be biased, not cured by subsequent peremptory challenge on part of defense. **27,** 633 (43 N. W., 404).

6096 (468). The following shall be good **causes for challenge** to any person called as a juror on the trial of any indictment: *First*—That he was a member of the grand jury which found the indictment. *Second*—That he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided*, That if a juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments, or reports, or upon rumor, or hearsay, and not upon conversations with witnesses of the transactions, or reading reports of their testimony, or hearing them testify, and the juror shall say, on oath, that he feels able notwithstanding such opinion to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror is impartial, and will render such verdict, may, in its discretion, admit such juror as competent to serve in such case. *Third*—In indictments for an offense the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death. *Fourth*—That he is a relation, within the fifth degree, to the person alleged to be injured, or attempted to be injured, or to the person on whose complaint the prosecution was instituted or to the defendant. *Fifth*—That he has served on a petit jury which was sworn in the same cause against the same defendant, and which the jury either rendered a verdict which was set aside, or was discharged after hearing the evidence. *Sixth*—That he served as a juror in a civil case brought against the defendant for the same act. *Seventh*—That he has been in good faith subpœnaed as a witness in the case. *Eighth*—That he is an habitual drunkard. *Ninth*—The same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

If a proposed juror is a relative within the fifth degree to a defendant it is ground of challenge. **20,** 237 (29 N. W., 911). The failure to interrogate a juror on his *voir dire* as to his residence, is a waiver of the objection that he was not a resident of the county. **12,** 491 (11 N. W., 744). Questions on *voir dire* examination should be confined strictly to juror's feeling as to bias. **27,** 707 (43 N. W., 747; 44 N. W., 108). Juror shown to be incompetent from statements on *voir dire*. **27,** 631 (43 N. W., 404). When it appears that juror has formed an opinion from reading reports of testimony, though he might swear that he could render an impartial verdict, yet he is incompetent. **5,** 33. Juryman who thought he could "return a fair and impartial verdict but might lean a little the other way," held incompetent. **4,** 545. One who discloses that he has an opinion which will require evidence to remove, disqualified, though he thinks he could render an impartial verdict. **29**, 445 (45 N. W., 451). An opinion based upon a hypothecated case may not disqualify a man as a juror. **15**, 384 (19 N. W., 489). Mere impressions will not disqualify. **5**, 415. When juror's convictions are such that in a case depending upon circumstantial evidence would preclude him from returning a verdict of guilty, if the punishment would be death, juror is incompetent. **8**, 412. See **4**, 75; **4**, 548; **5**, 31; **5**, 182; **22**, 523 (35 N. W., 405).

6097 (469). All **challenges** for cause shall be **tried by** the **court,** on the oath of the person challenged, or on other evidence, and such challenge shall be made before the jury is sworn, and not afterward.

6098 (470). If **two** or more **persons** be put **on** trial at the same time, each must be allowed his **separate** peremptory **challenge.**

6099 (471). When all challenges have been made, the following oath shall be administered: "You shall well and truly try, and true deliverance make, between the state of Nebraska and the prisoner at the bar (giving his or her name); so help you God."

Any agreement of the jury to avoid agreeing upon a verdict is a violation of this oath. **10**, 104 (4 N. W., 422).

6100 (472). Any **juror** shall be allowed to make **affirmation,** and the words "this you do as you shall answer under the pains and penalties of perjury" shall be substituted instead of the words "so help you God."

6101 (473). No person shall be disqualified as a **witness** in any criminal prosecution, by reason of his **interest** in the event of the same, as a party or otherwise, or by reason of his conviction of any crime, but such interest or conviction may be shown for the purpose of **affecting** his **credibility.** In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the **person** so **charged** shall, at his own request, but not otherwise, be deemed a **competent** witness; nor shall the neglect or refusal to testify create any presumption against him, nor shall any reference be made to, nor any comment upon, such neglect or refusal.

Confessions to be admissible should be made voluntarily and without inducement of any kind. **4**, 230. Witness's interest in the case to be considered. **8**, 418. All statements made by a prisoner are to be taken together. **8**, 86.

6102 (474). When two or more persons shall be indicted together, the court may, at any time before the defendant has gone into his defense, direct any one of the defendants to be discharged that he may be a **witness for** the **state.** An accused may, also, when there is **not sufficient evidence** to put him upon his defense, be discharged by the court; or, if not discharged by the court, shall be entitled to the immediate verdict of the jury, for the purpose of giving evidence for others accused with him; such order of discharge in either case shall be a bar to another prosecution for the same offense.

One jointly indicted is a competent witness. **5**, 35.

6103 (475). In trials for taking a woman away with intent to force her to be married, or defiled, and for seduction, for the purpose of prostitution, **no conviction** shall be had **on** the **evidence of** the **female offended** against, unsupported by other evidence.

6104 (476). In trials for **conspiracy,** in cases when an overt act is required by law to consummate the offense, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts so alleged be proved on trial; but other overt acts not alleged in the indictment may be given in **evidence** on the part of the prosecution.

6105 (477). In trials for **treason,** no **evidence** shall be given of any overt act that is not expressly laid in the indictment; and no conviction shall be had upon any indictment for said offense, unless one or more overt acts be expressly alleged therein. No person shall be convicted of treason but by the testimony of two lawful witnesses to the same overt act of treason whereof he stands indicted, unless he confesses to the same in open court; and no person shall be convicted of an offense under the twenty-third or twenty-fourth section of this code, but by the testimony of two credible witnesses, unless the person indicted confesses his guilt in open court

6106 (478). After the jury has been impaneled and sworn, the **trial proceed** in the following **order:** *First*—The counsel for the state must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it. *Second*—The defendant or his counsel must then state his defense, and may briefly state the evidence he expects to offer in support of it. *Third*—The state must first produce its evidence; the defendant will then produce his evidence. *Fourth*—The state will then be confined to rebutting evidence, unless the court, for good reason, in furtherance of justice, shall permit it to offer evidence in chief. *Fifth*—When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing if either party require it. *Sixth*—When the evidence is concluded, unless the case is submitted without argument, the counsel for the state shall commence, the defendant or his counsel follow, and the counsel for the state conclude the argument to the jury. *Seventh*—The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury; which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by the court, if either party request it, before the argument to the jury is commenced; and such charge or charges, or any other charge or instruction provided for in this section, when so written and given, shall in no case be orally qualified, modified, or in manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement and returned with their verdict into court, and shall remain on file with the papers of the case.

Order of introduction of testimony discretionary with the court. **7,** 337. Prosecutor may reopen his case and introduce testimony even after defense has examined witnesses. **7,** 341. Examination of witnesses. **7,** 340. Interested witnesses. **5,** 384. Improper conduct of counsel during trial. **8,** 89. Rule governing addresses of counsel. **23,** 762 (37 N. W., 630).

6107 (479). Whenever in the opinion of the court it is proper for the jury to have a **view of** the **place** in which any material fact occurred, it may order them to be conducted in a body, under the charge of the sheriff, to the place which shall be shown to them by some person appointed by the court. While the jury are thus absent, no person other than the sheriff having then in charge, and the person appointed to show them the place, shall speak to them on any subject connected with the trial.

Jury may view place, but should view in the presence of prisoner, unless prisoner waives right. **5,** 35.

6108 (480). When it shall appear at any time before the verdict that a **mistake** has been made **in charging** the proper **offense,** the accused shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense on the first day of the next term of such court; and shall, if necessary, likewise recognize the witnesses to appear and testify.

6109 (481). When a **jury** has been impaneled in a case contemplated by the preceding section, such jury may be **discharged** without prejudice to the prosecution.

Papers stricken from the files no part of the case unless brought in by order of court, or preserved in bill of exceptions. **7,** 354.

6110 (482). In all cases where a defendant shall feel himself aggrieved by any opinion or decision of the court, he may present his **bill of exceptions** thereto; and it shall be the duty of the court to sign and seal the same; and the taking, preparing, and signing, and sealing of said bill shall be governed by the rules established in such matters in civil cases. Where the ground of exception is that the verdict is not sustained by sufficient evidence, or is contrary to law, and the court has overruled a motion for a new trial made on that ground, the bill of exceptions shall set out the evidence. The bill of exceptions, when signed and sealed, shall be made a part of the record, and shall have the same force and effect as in civil cases.

6111 (483). The **prosecuting attorney** may take **exceptions** to any opinion or decision of the court during the prosecution of the cause; and the bill containing the exceptions, upon being presented, shall, if it be conformable to the truth, be signed and sealed by the court, which bill shall be made a part of the record, and be in all respects governed by the rules established as to bills of exceptions in civil cases, except as herein provided.

Prosecuting attorney must obtain leave of supreme court before filing bill of exceptions. **12,** 355 and 386 (11 N. W., 459).

6112 (484). When a **case** is finally **submitted** to the **jury**, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court. The officer having them in charge shall not suffer any communication to be made to them, or make any himself, except to ask them whether they have agreed upon a verdict, unless by order of the court; nor shall he communicate to any one, before the verdict is delivered, any matter in relation to the state of their deliberations. If the jury are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person on the subject of the trial, or to listen to any conversation on the subject, and it is their duty not to form or express an opinion thereon until the cause is finally submitted to them.

Jury may be permitted to separate during adjournment in trial of capital cases. **8, 92; 8,** 412. Misconduct of juror in reading from copy of statutes, held, to vitiate verdict. **24,** 808-9 (40 N. W., 317). Presence of bailiff in jury-room vitiates verdict. **24,** 717 (40 N. W., 302). Affidavits of jurors for purpose of avoiding a verdict. **24,** 804 (40 N. W., 317).

6113 (485). In case a **jury** shall be **discharged** on account of sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the **reasons** for such discharge shall be **entered** upon the journal; and such discharge shall be without prejudice to the prosecution.

Record must show the necessity for discharge. **18,** 457 (25 N. W., 722).

6114 (486). When the **jury** have **agreed** upon their verdict they must be conducted into court by the officer having them in charge. Before the verdict is accepted the jury may be **polled** at the request of either the prosecuting attorney or the defendant.

A verdict to be of any validity must be delivered in open court. A privy verdict is invalid. **10,** 107 (4 N. W., 420). Verdict signed by all the jurors is good. **7,** 342.

6115 (487). Upon an indictment for an **offense** consisting **of different degrees** the jury may find the defendant not guilty of the degree charged, and **guilty of** any degree **inferior** thereto, and upon an indictment for any offense the jury may find the defendant not guilty of the offense but guilty of an attempt to commit the same, where such an attempt is an offense.

6116 (488). When the indictment charges an **offense against** the **property** of another, by larceny, embezzlement, or obtaining under false pretenses, the jury, on conviction, shall ascertain and declare in their verdict the value of the property stolen, embezzled, or falsely obtained.

Jury must find value of property stolen, embezzled, or feloniously obtained. **22,** 420 (35 N. W., 202).

6117 (489). That in all trials for murder the jury before whom such trial is had, if they find the prisoner guilty thereof, shall ascertain in their **verdict** whether it be **murder** in the first or second **degree,** or manslaughter; and if such person be convicted by confession in open court, the court shall proceed by examination of witnesses, in open court, to determine the degree of the crime, and shall pronounce sentence accordingly.

A verdict of "guilty" which does not fix the degree will not support a sentence. **6,** 342; **18,** 405 (25 N. W., 573). Verdict good if signed by all the jurors, and may be signed by foreman in presence and with consent of others without returning to jury room. **7,** 342. General verdict sufficient. **5,** 418. A verdict which omits the name of the defendant fatally defective. **6,** 341. Indictment may contain count for murder in first degree, with one for murder in second degree and for manslaughter, when but one homicide is charged. **12,** 64 (10 N. W., 463). To constitute murder in the first degree it is necessary to prove that the act was done unlawfully, maliciously, with deliberation and premeditation. **9,** 248 (1 N. W., 857). On a second trial may be found guilty of a higher crime than on first. **18,** 64 (24 N. W., 390). Cited, **4,** 228; **12,** 381 (11 N. W., 494); **24,** 845 (40 N. W., 420). Cited and construed, **11,** 12 (7 N. W., 444).

Sec. 6118. "An act to authorize the judge of the district court to designate the county where an indictment may be found, and the person tried, for any felonious offense charged to have been committed in any unorganized county or territory of this state, or in any county where no district courts are held, and to provide for the payment of fees and expenses incurred in the arrest and prosecution of such person," etc. 1879, p. 62. In force February 24. (Repealing act of 1875, p. 31.)

6118. That it shall be lawful for the judge of any judicial district court within the state of Nebraska, where it has been made to appear to him that a **crime** has been committed amounting to felony, **within** any **unorganized county** or **territory,** or in any county where no terms of the district court of this state are held, attached to or in his said district, for judicial or other purposes, to designate the county in his district wherein the alleged offense may be inquired into by the grand jury, and in case an indictment found, the person or persons so indicted tried; *Provided,* Nothing herein shall prevent the person or persons indicted, upon a legal and proper application, removing the trial thereof to some other county in the same judicial district; *And provided further,* That all costs and expenses for the arrest and prosecution of such person or persons shall be paid out of the general fund of the state; *And provided further,* That no bill for costs or expenses shall be audited and paid without the certificate of the presiding judge of said district that said services have been performed, and that the account is correct.

CHAPTER XLVI.—Motions for New Trial and for Arrest of Judgment.

6119 (490). A new trial, after a verdict of conviction, may be granted on the application of the defendant, for any of the following **reasons,** affecting materially his substantial rights: *First*—Irregularity in the proceedings of the court, or the prosecuting attorney, or the witnesses for the state, or any order of the court, or abuse of discretion, by which the defendant was prevented from having a fair trial. *Second*—Misconduct of the jury, or the prosecuting attorney, or of the witnesses for the state. *Third*—Accident or surprise which ordinary prudence could not have guarded against. *Fourth*—That the verdict is not sustained by sufficient evidence or is contrary to law. *Fifth*—Newly discovered evidence material for the defendant, which he could not, with reasonable diligence, have discovered and produced at the trial. *Sixth*—Error of law occurring at the trial.

Application for a new trial must be made if at all at the same term at which the verdict was rendered and within three days unless unavoidably prevented. **21,** 327 (32 N. W., 69). Held, not to apply to a criminal case after the trial term. **19,** 644 (28 N. W., 323). Misconduct of attorney not ground unless excepted to. **20,** 172 (29 N. W., 292). Will not grant a new trial for the reason that a juror had expressed an opinion unfavorable to prisoner before the trial, unless it appears from the affidavit of both prisoner and counsel that neither of them had knowledge of such opinion before verdict. **7,** 350. New trial will not be granted on ground of newly discovered evidence when such evidence is merely cumulative. **8,** 415. Cited, **10,** 103 (4 N. W., 422).

6120 (491). The application for a new trial shall be by **motion** upon written **grounds,** filed at the term the verdict is rendered, and shall, except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, or [be] within three days after the verdict was rendered, unless unavoidably prevented. * In assigning the grounds of such motion, it shall be sufficient to assign the same in the language of the statute, and without further or other particularity.

All after * added 1881, p. 212.

6121 (492). The causes enumerated in subdivisions two, three, and five of section four hundred and ninety must be sustained by **affidavits** showing their truth, and may be controverted by affidavits.

6122 (493). A motion in **arrest of judgment** may be granted by the court for either of the following **causes:** *First*—That the grand jury which found the indictment had no legal authority to inquire into the offense charged, by reason of it not being within the jurisdiction of the court. *Second*—That the facts stated in the indictment do not constitute an offense.

6123 (494). No judgment can be arrested for a **defect in form.** The **effect of allowing** a **motion** in arrest of judgment shall be to place the defendant in the same position with respect to the prosecution as before the indictment was found. If, from the evidence on trial, there shall be sufficient reason to believe him to be guilty of an offense, the court shall order him to enter into a recognizance, with sufficient security conditioned for his appearance at the first day of the next term of the same court; otherwise, the defendant shall be discharged.

CHAPTER XLVII.—JUDGMENT AND SENTENCE.

6124 (495). Before the sentence is pronounced, the **defendant** must be **informed** by the court **of** the **verdict** of the jury, and asked whether he has anything to say why judgment should not be pronounced against him.

Sentence within the limit of the law discretionary with court. **6,** 550. If statute not complied with cause will be remanded. **4,** 233. New trial will be granted though no exception taken to error of court. **4,** 530.

6125 (496). If the **defendant** have **nothing to say,** or if he show no good and sufficient cause why judgment should not be pronounced, the court shall proceed to pronounce judgment as provided by law.

6126 (497). Whenever a **fine** shall be the whole or part of a sentence, the court may, in its discretion, order that the person sentenced shall remain confined in the county jail until the amount of such fine and costs are paid.

6127 (498). In all cases when any person shall be convicted of any offense by this code declared criminal, and made punishable by **imprisonment** in the penitentiary, the **court** shall **declare** in their sentence **for what** period of **time,** within the respective periods prescribed by law, such convict shall be imprisoned at hard labor in the penitentiary, and shall, moreover, determine and declare in their sentence whether any, and if any, for what period of time, such convict shall be kept in solitary confinement in the cells of the penitentiary, without labor.

6128 (499). Any person convicted of any offense against the provisions of this act may be required by the court to enter into a recognizance with sufficient surety, in such sum as the court may deem proper, to keep the peace and be of good behavior for such length of time, not exceeding two years, as the court shall direct; and the court may order such person to stand committed until such order be complied with, or such person be otherwise discharged by due course of law.

6129 (500). In all cases wherein courts or magistrates have now or may hereafter have the power to punish offenses either in whole or in part, by requiring the offender to pay a **fine** or **costs**, or both, the said courts or magistrates may make it a part of the sentence that the **party** stand **committed** and be imprisoned in the jail of the proper county **until** the same be **paid**, or secured to be **paid**, or the defendant is otherwise discharged according to law.

6130 (501). In every case of **conviction** of any person for felony or misdemeanor, it shall be the duty of the court or magistrate to render judgment for the **costs** of prosecution against the person convicted.

6131 (502). When any court or magistrate shall **sentence** any convict **to** imprisonment in the **jail** of the county as a punishment for the offense committed, the judgment and sentence shall require that the convict be imprisoned in the cell of the jail of the county, or that he be kept at hard labor in the jail, in the discretion of the court or magistrate; and when the imprisonment is to be without labor, the sentence may require the convict to be fed on bread and water only, the whole or any part of the term of imprisonment.

CHAPTER XLVIII.—Proceedings in Error.

6132 (503). When a person shall be convicted of an offense, and shall give notice to the court of his intention to apply for a **writ of error**, the court may, at its discretion, on application of the person so convicted, **suspend** the **execution** of the sentence or judgment against him until the next term of the court, or for such period, not beyond the session of the court, nor beyond the next term of the supreme court, as will give the person so convicted a reasonable time to apply for such writ; *Provided*, When any such conviction is of an offense the punishment whereof is capital, at least one hundred days shall intervene between the date of such sentence and judgment, and days appointed for the execution thereof.

6133 (504). No court shall **suspend** the **execution** of the sentence or judgment against any person convicted and sentenced **for a misdemeanor,** unless such person shall enter into a recognizance with such **security** as the court may require, conditioned that the person so convicted and sentenced shall appear at the next term of such court, and from term to term, until the case shall be determined, and abide the judgment or sentence of the court.

6134 (505). Whenever a person shall be convicted of a **felony**, and the **judgment** shall be **suspended** as aforesaid, it shall be the duty of the court to order the person so convicted into the custody of the sheriff, to be imprisoned until the case in error be disposed of. If a person so convicted shall **escape**, the jailer or other officer from whose custody the escape was made may return to the clerk or the proper court the writ by virtue of which the convict was held in custody, with information of the escape endorsed thereon, whereupon said clerk shall issue a warrant stating such conviction, and commanding the sheriff of the county to pursue after such person into any county in the state; and said sheriff shall take such person and commit him to the jail of such county.

6135 (506). If **no writ** of error be **allowed** by the next term of the court after the sentence was pronounced, the court shall, at such term, carry the same into

execution; or if no such writ be allowed by the expiration of the time of suspension, the judgment shall be carried into effect by the proper officers, the same as it would have been previously, had there been no suspension.

6136 (507). If a writ of error be allowed, and on the hearing the **judgment** of the court in which the trial was had shall be **affirmed**, such court shall carry into **execution** the sentence pronounced against the defendant at the next term after the judgment of affirmance is rendered.

6137 (508). In all criminal cases, **writs of error** shall be issued by the clerk of the supreme court upon the filing of a petition in error and transcript of the record of the proceedings of the district court and payment of costs as in civil cases; *Provided*, That if any person desiring to obtain such writ of error shall file an affidavit with the clerk of the court that he is unable, on account of his poverty, to pay said costs, the clerk shall enter the suit upon the docket, and upon the entry of final judgment endorse the amount of costs upon the mandate, and the same shall be paid by the county in which the indictment was found.

Rewritten 1883, p. 332. Proceedings must be instituted within one year after judgment. **8,** 295. Error must affirmatively appear. **5,** 354. Order overruling motion to discharge prisoners, made before conviction and final judgment, is not a final order, and cannot be reviewed on error. **10,** 103 (4 N. W., 422). See **26,** 387 (41 N. W., 951); **21,** 326 (32 N. W., 69).

6138 (509). In all cases of conviction where the **punishment** shall be **capital**, the judges or court allowing such writ of error shall order a **suspension** of the execution until such writ of error shall be heard and determined; upon hearing such writ of error, they shall order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence, as the nature of the case may require.

Sec. 6139. "An act to provide for the supreme court to reduce the sentence of persons convicted of crime when pending in the supreme court on error, and to allow said court to render judgment against such persons as may be warranted by the evidence." 1887, p. 668. In force March 31.

6139. That in all criminal cases that now are or may hereafter be pending in the supreme court on error, the said **court may reduce** the **sentence** rendered by the district court against the accused, when in their opinion the sentence is excessive, and it shall be the duty of said supreme court to render such sentence against the accused as in their opinion may be warranted by the evidence.

6140 (510). In all cases of conviction for a **felony**, the court, judge, or judges allowing the writ of error shall order the same to be made returnable before the supreme court, and shall order a suspension of the execution of said sentence.

6141 (511). In cases of conviction for **misdemeanor** in the district court, the court or judge allowing the writ of error shall make it returnable as in cases of conviction of felony, and may order a suspension of the execution of the sentence upon the defendant on his entering into a recognizance before the clerk of the court in which the cause was tried, with sufficient security, to be approved of by the clerk, in such sum as shall be specified in the order of the court or judge allowing such writ of error, which recognizance shall be conditioned for the defendant's prosecuting said writ of error to effect and surrendering himself to the custody of the sheriff of the county in which such conviction was had, in case the judgment of the court shall not be reversed, or a new trial ordered.

6142 (512). When the **defendant** has been **committed** to the penitentiary of this state, and the **judgment** by virtue of which the commitment is made shall be **reversed** on a writ of error, by which reversal the defendant shall be entitled to his discharge or to a new trial, the clerk of the court reversing said judgment shall, under the seal of the court, forthwith certify the same to the warden of the penitentiary.

See **21,** 327 (32 N. W., 69).

6143 (513). Said warden, on receipt of such certificate, in case a discharge of such defendant be ordered, shall immediately discharge such defendant from the penitentiary.

6144 (514). In case a new trial be ordered, the warden of the penitentiary shall forthwith cause said defendant to be taken and conducted to the county jail and committed to the custody of the keeper thereof in the county in which said defendant was convicted.

Warden not entitled to extra pay for this, except expenses. **15,** 458 (20 N. W., 110).

EXCEPTIONS TAKEN BY PROSECUTING ATTORNEY.

6145 (515). The prosecuting attorney may present to the supreme court any bill of exceptions taken under the provisions of section four hundred and eighty three, and apply for admission to file it with the clerk thereof for the decision of such court upon the points presented therein; but prior thereto he shall give reasonable notice to the judge who presided at the trial in which the bill was taken of his purpose to make such application; and if the supreme court shall allow such bill to be filed, such judge shall appoint some competent attorney to argue the case against the prosecuting attorney, which attorney shall receive for his services a fee not exceeding one hundred dollars, to be fixed by such court, and to be paid out of the treasury of the county in which the bill was taken.

Bill of exceptions and petition in error on behalf of state, filed without leave of court, will be dismissed. **14,** 579 (16 N. W., 823); **11,** 366 (9 N. W., 560); **12,** 386 (11 N. W., 495).

6146 (516). If the supreme court shall be of the opinion that the question presented should be decided upon, they shall allow the bill of exceptions to be filed and render a decision thereon.

6147 (517). The judgment of the court in the case in which the bill was taken shall not be reversed, nor in any manner affected; but the decision of the supreme court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may afterward arise in the state.

CHAPTER XLIX.—Executions.

6148 (518). Every person sentenced to the penitentiary shall, within thirty days and as early as practicable after his sentence, unless the execution thereof be suspended, be conveyed to the penitentiary of this state, by the sheriff of the county in which the conviction took place, and shall there be delivered into the custody of the warden of said penitentiary, together with a copy of the sentence of the court ordering such imprisonment, there to be safely kept until the term of his confinement shall have expired, or he shall be pardoned. If the execution of the sentence be suspended, and the judgment is afterward affirmed, the defendant shall be conveyed to the penitentiary within thirty days after the court shall direct the sentence to be executed.

6149 (519). The sheriffs of the several counties of this state, during the time they shall be employed in conveying to the penitentiary any person sentenced to imprisonment therein, shall have the same power and authority to secure him in any jail within the state, and to demand the assistance of any sheriff, jailer, or other person within this state, in keeping such prisoner, as if the sheriff were in his own proper county; and all such sheriffs, jailers, or other persons so called upon shall be liable, on refusal, to the same penalties as if the sheriff making the demand were in his own county.

6150 (520). When any person convicted of an offense shall be sentenced to imprisonment in the county jail, the court or magistrate shall order the defendant into the custody of the sheriff, constable, or other proper officer, and shall issue to such officer a warrant of commitment, who shall deliver the convict, together with a copy of the warrant, to the jailer, in whose custody he shall remain in the jail of the proper county, until the term of his confinement shall have expired, or he shall have been pardoned, or otherwise legally discharged.

6151 (521). In all cases of misdemeanor in which courts or magistrates shall have power to **fine** any offender, and shall render judgment for such fine, it shall be lawful to issue **executions** for the same, with the costs taxed against said offender, to be **levied** on the goods and chattels of any such offender, and, for want of the same, upon the **body** of said offender, who shall thereupon be committed to the jail of the proper county until said fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

6152 (522). When the convict is adjudged to be imprisoned for fines or costs, as provided for in section five hundred, the sentence and execution may, in the discretion of the court or magistrate, require the **imprisonment** to be **at hard labor** by the convict.

Amended 1875, p. 18.

6153 (523). **Where** any **jail,** in any county in this state, **shall not have** a **cell** or dungeon therein, then, and in that case, when the court shall sentence any person or persons to imprisonment in the cell of any jail, under the provisions of this act, the person or persons so sentenced shall be confined in that part of the jail usually allotted to the confinement of criminals, or such convict may be imprisoned as provided in section three hundred and seventy-seven, when there is the necessity therefor mentioned in said section.

6154 (524). **Judgments** for fines and costs in criminal cases shall be a **lien** upon all the property of the defendant within the county from the time of docketing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No **property** of any convict shall be **exempt** from execution issued upon any such judgment as aforesaid, against such convict, except in cases where the convict shall be sentenced to the penitentiary for a period of more than two years, or to suffer death, in which cases there shall be the same exemption as at the time may be provided by law for civil cases.

6155 (525). It shall be the duty of the **clerk** of the district court to **issue execution** for every judgment rendered during the term, for fines and forfeited recognizance, and for the costs in such cases, which remain unpaid and unreplevied; and upon like condition each magistrate shall issue execution forthwith for fines and costs assessed by him.

6156 (526). It shall and may be lawful for any person or persons convicted of any criminal offense to **replevy** the **judgment for** the fine and **costs,** or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a **recognizance** before the court or magistrate, to the people of this state, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance so taken is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same; and upon the breach thereof, execution shall be issued against the goods and chattels, lands and tenements of the persons who entered into recognizance, in the same manner as if it had been a judgment, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution.

6157 (527). In all **cases** where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in the last preceding section, no execution shall issue for said fine and costs, as prescribed in section five hundred and twenty-five; and **further,** such person or persons, after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment, in consequence of any conviction, unless where imprisonment is by this code made a part of the punishment; in that case such convicted person or persons shall be discharged from his, or her, or their imprisonment at the expiration thereof, if he, she, or they have replevied the fine and costs as aforesaid.

6158 (527*). **Executions** for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be **issued into any county** in the state.

6159 (528). Whenever it shall be made satisfactorily to appear to the district court, or to the probate judge of the proper county, after all **legal means** have been **exhausted,** that any person who is confined in jail for any fine or costs of prosecution, for any criminal offense, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of said court or judge to discharge such person from further imprisonment, for such fines and costs, which discharge shall operate as a complete **release of** such **fine and costs;** *Provided,* That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, nor until the convict shall have been imprisoned at least one day for every three dollars of the amount adjudged against him.

6160 (529). In every case, whenever it is desirable to obtain **execution to** be issued to **another county,** or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds his office, a **transcript** of the judgment and proceedings in the cause, whereupon such clerk shall enter the cause upon the proper docket for execution to be forthwith issued thereon by such clerk, and served in all respects as though the judgment had been rendered in the district court of such county.

6161 (530). When the physician regularly employed to have the medical **care of persons in** a county **jail** shall certify in writing to the jailer that the health or safety of any convict confined in such jail requires that he be treated in a manner different from that prescribed by the sentence of such convict, such jailer shall render to the convict such other and different treatment as shall be specified in such certificate as necessary, and may discharge him altogether if required by such certificate; *Provided* That such physician be one employed for such medical care by the approval of the county commissioners.

6162 (531). For the purpose of enabling the county commissioners of any county in this state to employ in a profitable manner all **persons** who have heretofore been or may hereafter be **sentenced to hard labor** in the jail of the county, said commissioners, or a majority of them, shall have power to designate the place where the persons so sentenced shall work, and make all proper and needful regulations and provisions for the profitable **employment** of such convicts, and for their safe custody during such employment. The county jail is hereby declared to extend to any stone quarry, road, or other place that shall be designated by the county commissioners for the employment of such convicts.

6163 (532). It shall be the duty of the county commissioners to make the contracts for the **employment** of convicts as specified in the preceding section, and the sheriff of the county shall collect the **proceeds** of all such labor, and after paying the board of such convicts and the expenses incident to such labor, to pay the balance to the county treasurer within ten days.

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* This and the preceding section are both numbered 527 in the original. G. S., p. 838.

CHAPTER L.—RECEIPTS AND DISBURSEMENTS OF MONEY IN CRIMINAL CAUSES.

6164 (533). All moneys due upon any judgment for fines, costs, or forfeited recognizance shall be **paid to** the **magistrate** or clerk of court where the judgment is pending, if paid before execution is issued therefor otherwise to the officer holding the execution; or such moneys may be paid to the sheriff of the county if the judgment debtor is in jail, and every sheriff, constable, marshal, or other ministerial officer who shall receive any such moneys as aforesaid shall pay the same to the proper magistrate or clerk of court within ten days from the time of receiving the same.

6165 (534). Every magistrate or clerk of court, upon receiving any money on account of forfeited recognizances, fines, or costs, accruing or due to the county or state, shall **pay** the same **to** the **treasurer** of the proper county (except as may be otherwise expressly provided) within ten days from the time of receiving the same. When any moneys shall be paid to a magistrate or clerk of court on account of costs due to individual persons, such magistrate shall pay the same to the persons to whom the same are due, upon demand therefor.

6166 (535). **No costs** shall be **paid from** the **county** treasury **in any** case of prosecution for a **misdemeanor,** or for surety to keep the peace, except as provided in section five hundred and forty-one.

6167 (536). Upon examination before a magistrate on complaint of a **felony,** whether the accused be held to answer in court or discharged, the **magistrate** may file with the county clerk a certified transcript of the **costs,** giving the items of the same, and to whom each is due, and on what account. As early as may be after the filing of such bill as aforesaid, but without assembling for the special purpose, the **commissioners** of the proper county shall **examine** into such bill of costs, as to its correctness, justice, and legality, and may, if need be, examine under oath any person upon the subject, which oath may be administered by the county clerk. And it shall be the duty of said commissioners to disallow any item, in whole or in part, of such bill, that shall be found to be unlawfully or needlessly incurred; or, if it shall appear that the complaint was made for a felony, when it should have been for a misdemeanor only, they may, in their discretion, disallow the entire bill, or any part thereof. Said commissioners may order that such bill, or so much thereof as they find to be lawful and just, be paid from the county treasury, whereupon the county clerk shall draw warrants upon the county treasurer for the sums respectively due to each person upon such bill so allowed, which warrants said treasurer shall pay from the county general fund. And the amount of costs so allowed shall be certified by the county clerk, and the certificates filed with the papers in the cause, in the office of the clerk of the district court. And if the defendant shall be convicted, judgment shall be rendered against him for the costs so allowed, in addition to the costs made in the district court.

Costs incurred in prosecutions for felony or misdemeanor before magistrates are payble from the county treasury only as provided in this section and section 6172. The complaint under which costs are made, although charging a felony, is not conclusive on the question of allowance and payment. Section is constitutional. **10,** 299 (4 N. W.. 984). The respective counties are legally liable for the costs earned by justices of the peace, sheriff, and constables, "on examinations before a magistrate or a" proper "complaint of a felony, whether the accused be held to answer in court or is discharged." And in cases where the charge is for a felony but ought to have been for a misdemeanor, the board may allow or disallow the bill in whole or in part. **14,** 307 (15 N. W., 741).

6168 (537). Upon the discharge or conviction of the defendant in any case of felony in the district court, it shall be lawful for the clerk of such court to file in the office of the county clerk a bill of the costs not previously allowed by the county commissioners, whereupon the same shall be examined into, audited, and allowed, and paid in the manner specified in the last preceding section; *Provided*, That nothing in this or the preceding section shall preclude any magistrate or clerk, in any case, from delaying the filing of such cost bill for allowance as aforesaid, until it shall be determined whether the same will be collected from the defendant; and no cost bill shall be filed for allowance as aforesaid under the provisions of this section, while there is pending in the cause any proceedings in error, or any unexpired recognizance for replevy of the judgment as provided in section five hundred and twenty-six.

6169 (538). In any case of indictment for felony, where the defendant shall be convicted, it shall be the duty of the prosecuting attorney, clerk of the court, and sheriff of the county to use all lawful means within the scope of their respective powers, if need be, for the collection of the costs from the defendant, and the fine also, if any shall have been adjudged against him. And when the costs shall have been collected, if the same shall have been allowed for payment from the county treasury as provided in the last preceding section, it shall be the duty of the clerk of the court to certify and pay the same immediately to the county treasurer, together with any fine that may have been collected in the case.

6170 (539). Each and every magistrate shall, on or before the first day of February in each year, make out and deliver to the county clerk of the county in which he may reside, a statement in writing of all fines assessed by him for the year ending on the first day of January next preceding, showing the name of the party and the amount of the fine, the time when assessed, whether execution was issued thereon, and the return upon the same, or if no execution has been issued, the reasons for not issuing the same; and in case no fines have been assessed by such magistrate he shall return that fact, and said statement shall be certified by such magistrate to be a true and correct statement from his docket.

6171 (540). Any officer who shall pay to the county treasurer of any county any money collected for any fine, costs, forfeited recognizance, or proceeds of jail labor, shall take therefor the said treasurer's duplicate receipts, one of which shall be immediately filed with the county clerk, and the same shall be by him preserved in his office. All such receipts shall show upon the face thereof, definitely, what the moneys paid in were for, whether for fines, costs, forfeited recognizance, or jail labor, and the sums paid on account of each of said causes, and also the cause in which each item is paid, giving the name of the defendant in each case. All such moneys arising from fines and recognizances shall be credited by such treasurer to the county school fund, and the costs and proceeds of jail labor he shall credit to the county general fund. Whenever any costs in any criminal case shall be paid from the county treasury, such payment must be made from the county general fund; and when any warrant is drawn by the county clerk upon the treasurer of the county for the payment of such costs, a true record of the same and the definite purpose of every such warrant shall be recorded in his office, showing the cause in which such costs are paid.

6172 (541). Magistrates and clerks of courts may furnish to the county clerks of their respective counties certified copies of any cost bills that are not collectible, in cases of misdemeanor and peace warrant causes; and it shall be the duty of each county clerk receiving any such bills to place them upon a separate file and preserve them in his office. At the first meeting of the county commissioners in each county, in the months of April and October, of each year, if it shall appear from the records and files of the county clerk's office that the receipts into the county treasury from the sources mentioned in the last preceding section, from and after the taking effect of this code, are in excess of the amount allowed to be paid from said treasury, in the same time, for costs in criminal cases, including the sums paid for keeping and transporting prisoners in criminal cases, said commissioners shall make an order that a sum equal to such excess be appropriated from the county general fund for the payment of cost bills filed as aforesaid in misdemeanor and peace warrant causes, or so much thereof as may be necessary to pay all such bills or parts thereof, as may be found lawful and just. And thereupon said commissioners shall audit all such bills in the manner required in section five hundred and thirty-six, due notice of which auditing shall be previously given to each magistrate and clerk who shall have filed any such bill or bills as aforesaid, and in case the amount of the excess aforesaid is insufficient to pay all of such bills on file, the commissioners shall determine which and what parts of such bills are most equitable to be paid, and the county clerk shall draw all necessary warrants upon the county treasury for the payment of such bills, according to the order of the commissioners, which warrants said treasurer shall pay from the county general fund.

Cited, 14, 308 (15 N. W., 741). See note to section 6167.

Sec. 6173. "An act providing for the payment of witness fees in criminal cases." 1875, p. 33. In force February 24.

6173. That the **fees** of all witnesses in criminal cases in the district court shall be **paid** by the **county** where the indictment is found.

The object of this act was to settle which county should pay witness fees—the one from which or to which a change of venue is taken. 14, 20 (14 N. W., 549).

CHAPTER LI.—SPECIAL PROCEDURE IN CASES OF HOMICIDE.

6174 (542). Whenever it shall be brought to the knowledge of the coroner or the sheriff of any county in this state that a **murder** has been committed within their respective counties, and the person or persons committing such murder are unknown, or, if known, have fled from justice, it shall be the **duty of** the **coroner** or **sheriff** to **make** the same **known to** the **governor** of this state, together with such facts as may have come to his knowledge, going to show by whom such murder was committed, and the whereabouts of the murderer.

6175 (543). Upon the receipt of the information as prescribed by the preceding section, the governor of the state shall issue his proclamation offering such **reward** not exceeding two hundred dollars *for each person murdered* as he shall deem proper, for the arrest of the person or persons committing said crime, and the delivery of said person or persons to the sheriff or jailer of the county where said crime was committed. Upon the trial of any person for whom such reward has been offered, if the presiding judge shall, under his hand and seal of the court, certify to the governor that the person arrested and indicted committed the act charged in the indictment, the person or persons making the arrest shall be entitled to the reward.

* to * inserted 1885, p. 396.

6176 (544). The **governor,** upon presentation of the certificate as provided for in the preceding section, shall **give** the person holding said certificate an **order on** the **auditor** of the state, who shall issue a warrant for the amount.

6177 (545). **If any person** shall give any mortal blow, or administer any poison to another, in any county within this state, with intent to kill, and the party so **stricken** or poisoned, thereof shall **die in** any **other county** or state, the person giving such mortal blow, or administering such poison, may be tried and convicted of murder, or manslaughter, as the case may be, in the county where such mortal blow was given, or poison administered.

6178 (546). That the **mode of inflicting** the **punishment of death,** in all cases under this act, shall be by hanging by the neck until the person is dead; and the sheriff, in case of his death, inability, or absence, the coroner of the proper county in which sentence of death shall be pronounced by virtue of this act, shall be the executioner.

6179 (547). When any person shall be sentenced to be hung, such punishment **shall be inflicted in** the immediate **vicinity of** the **jail,** within an enclosure to be prepared for that purpose under the direction of the sheriff, which enclosure shall be higher than the gallows, and so constructed as to exclude the view of persons outside thereof.

6180 (548). In all cases in which the **jail** in any county shall be of such construction that the sentence of death can conveniently be carried into **execution within** its walls, **no enclosure** need be **prepared** as is provided in the preceding section, but such execution shall take place within the walls of the jail.

6181 (549). Whenever the sentence of death shall be about to be carried into **execution** in any county of this state which may at the time have **no jail,** it shall be the duty of the sheriff to cause such execution to be conducted agreeably to the provisions of section five hundred and forty-seven (547) at such convenient place at the county seat as he may select.

6182 (550). Besides the sheriff and his assistants, the following **persons** may be **present at** the execution, and none others: The clergyman in attendance upon the prisoner, such other persons as the prisoner may designate, not exceeding three in number, and such other persons as the sheriff may designate, not exceeding six in number.

6183 (551). Whenever the sheriff shall deem the **presence of a military** force necessary to carry into effect the provisions of the four preceding sections, he shall make a written requisition upon the officer of the militia highest in command then in his county, who shall issue the necessary orders to ensure a compliance with the requisition of such sheriff.

6184 (552). Whenever the **sheriff** shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall **make return** of his proceedings as soon as may be to the clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence.

6185 (553). If any **convict sentenced** to the punishment of death shall **appear** to be **insane,** the sheriff shall forthwith give notice thereof to a judge of the district court of the judicial district, and shall summon a jury of twelve impartial men to inquire into such insanity at a time and place to be fixed by the judge, and shall give immediate notice thereof to the district attorney.

6186 (554). The judge, clerk of the court, and district attorney shall attend the **inquiry.** Witnesses may be produced and examined before the jury. The **finding** shall be in writing, signed by the jury. If it be found that the convict is insane, the judge shall suspend the execution of the convict until the sheriff shall receive a warrant from the governor of the state, directing such execution. The finding of the jury and order of the judge, certified by the judge, shall be by the clerk entered on the journal of the court.

6187 (555). The **sheriff** shall **transmit** immediately a certified copy of such **finding** to the governor, who may, as soon as he shall be convinced that the convict has become of sound mind, issue a warrant appointing a time for his execution.

6188 (556). If a **female** convict **sentenced** to the punishment of death **ap-**

pears to be **pregnant,** the sheriff shall, in like manner, summon a jury of six persons, who, on like proceedings being had as in the case of an insane convict, shall return a finding signed by them.

6189 (557). If by such **finding** it shall appear that such female convict is with child, the sheriff shall, in like manner, suspend the execution of her sentence, and shall transmit the finding to the governor, who, on being satisfied that such woman is no longer pregnant, shall issue a warrant appointing a day for her execution.

6190 (558). Whenever the governor may deem it expedient and proper to **reprieve** any person under sentence of death, under any condition whatsoever, the **condition** upon which such reprieve is granted shall be specified in the warrant, and the person accepting such conditional reprieve shall subscribe such **acceptance** upon the warrant containing the conditions of reprieve in the presence of two witnesses, who shall attest the same; and such witnesses shall go before the clerk of the court where such sentence is recorded, and shall prove the same; and the clerk shall thereupon record the warrant of reprieve, together with the acceptance and proof thereof, in the journals of the court, a transcript of which record shall at all times thereafter be evidence for or against the person accepting such conditional reprieve.

6191 (559). If in case of any reprieve the **governor** shall deem it expedient and proper to **confine** the **persons** so **reprieved** in the penitentiary, it being so specified in the warrant, the sheriff or other officer having the person so reprieved in his custody shall convey him to the penitentiary in the same manner as other convicts are directed by law to be conveyed; and the warden of the penitentiary shall receive such person, together with the warrant or reprieve, and shall proceed with such convict as such warrant may direct; and the expenses of transporting such person to the penitentiary shall be allowed and paid as in other cases.

6192 (560). If any **person reprieved** according to section five hundred and fifty-eight shall **violate** the **conditions** upon which such reprieve is granted, such person shall be proceeded against as in other cases of persons escaping from prison convicted of offenses.

6193 (561). If any **person** who has been **convicted of murder** in the first degree, and sentenced to be hung, shall **escape,** and shall not be retaken before the time for his execution, it shall be lawful for the sheriff to re-arrest such person, and commit him to the jail of the proper county, and make return thereof to the court in which the sentence was passed; and thereupon the court shall proceed to fix the time of execution, which shall be carried into effect by the proper officer as may be provided by law for the execution of persons convicted of murder in the first degree.

6194 (562). When any **person** has been duly tried and **convicted of** the crime of **murder** in the first degree, before any district court in this state, and under said conviction has been sentenced by said court to suffer death, it shall be the **duty of** the **clerk** of the court before which said conviction was had to issue his warrant, under the seal of said court, reciting therein said conviction and sentence, directed to the sheriff of his county, commanding him to proceed at the time and place named in said sentence, to carry the same into execution, by causing the person so convicted and sentenced to be hanged by the neck until he is dead.

6195 (563). That it shall be the **duty of** said **sheriff,** on receipt of said warrant, provided the supreme court, or a judge thereof, have not ordered a suspension of the execution of said sentence, to proceed at the time and place named in said warrant, to carry said sentence into **execution,** by causing said person so convicted and sentenced to be hanged by the neck until he is dead; and of the manner of his executing said warrant, and his doings thereon, he shall forthwith make return to said clerk, who shall cause said warrant and return to be recorded as a part of said case.

6196 (564). That in case the supreme court, or any judge thereof, shall have allowed a writ of error in said case and ordered a suspension of the execution of said sentence until said writ of error shall be heard and determined, and after having heard and determined the same, shall have appointed a day certain for, and ordered the execution of said sentence, it shall be the duty of the clerk of the supreme court to issue to said sheriff his warrant, under the seal of said court, commanding him to proceed to carry said sentence into execution, at the time so appointed by said court, which time shall be stated in said warrant; and upon receipt of said warrant last aforesaid, it shall be the duty of said sheriff to cause said sentence to be executed as aforesaid, at the time so appointed by the supreme court, and to make due return of said warrant, and of his proceedings thereunder, forthwith to said clerk of said district court, who shall cause said warrant and return to be recorded as aforesaid.

CHAPTER LII.—PARDONS, REPRIEVES, AND MITIGATION OF PENALTIES.

6197 (565). The governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason, and to remit fines and forfeiture upon such conditions, and with such restrictions and limitations as he may think proper, subject to the regulations prescribed in this chapter. But no pardon shall be granted until after notice shall have first been given for two weeks of such application for a pardon, by publishing the said notice in a newspaper printed in the county where the conviction was had, which notice shall state name of the applicant, the offense of which he was convicted, in what court, and when convicted, and the time the application will be made, and in case no newspaper is published in such county, then the said notice may be given by posting the same at the court house door of said county, two weeks before such application; *Provided however*, That when any person is confined in the state penitentiary, the governor shall have power to pardon such person on account of good conduct, for the purpose of restoring him to civil rights, not more than ten days before the expiration of his term of imprisonment, without the notice provided for in this section.

6198 (566). The governor shall have power to issue his warrant to all proper officers to carry into effect any act which he has power to do, and which is regulated in this chapter; and all such officers are required to obey such warrant.

6199 (567). Whenever any convict is pardoned or reprieved, or his sentence is commuted, or any fine or forfeiture is remitted, it is the duty of the officer to whom the warrant is directed, as soon as may be after executing the same, to make a return in writing thereon to the secretary of state of his doings under the same, and sign the same with his name of office; and he must also file in the office of the clerk of the court in which the conviction was had, or in which the sentence was to have been enforced, a certified copy of the warrant and return, the proper entries in relation to which shall be made by such clerk.

6200 (568). The governor must report to the general assembly at its next meeting thereafter each case of reprieve, commutation, or pardon granted, and the reason therefor, stating the name of the convict, the crime for which he was convicted, the sentence and its date, and the date of the reprieve, commutation or pardon. He must, in like manner, also report the names of all persons in whose favor fines or forfeitures have been remitted, and the several amounts remitted.

Secs. 6201 to 6203. "An act in relation to persons imprisoned for offenses against the state of Nebraska." 1875, p. 32. In force February 25. (Superseding sec. 569 of original code.)

6201. That every **convict** who is now or who may hereafter be confined in the Nebraska penitentiary, and who shall have no infraction of the rules or regulations of the penitentiary or laws of the state recorded against him, and who performs in a faithful manner the duties assigned to him in an orderly and peaceable manner, shall be entitled to the **diminution of time** from his sentence as appears in the following section, and *pro rata* for any part of a year where the sentence is for more or less than a year: Of two months on the first year; of two months on the second year; and three months on the third year; of four months on the fourth year, and the like diminution of time for each succeeding year of time of their sentence.

6202. Whenever a charge of **misconduct** shall be sustained by the warden and inspectors at their first meeting after said charge or charges shall have been recorded by the warden or his deputy against a **prisoner,** he shall **lose** the **deduction of time** specified in section one of this act, but he may regain by continuous good conduct thereafter a deduction of time, not exceeding seventy-five per cent of said time specified in section one of this act, and as much less as the warden and inspectors may certify to, as a suitable reward for good conduct.

6203. The **governor** shall, upon receiving certificate of good conduct from the warden and inspectors, immediately **issue** his **warrant for discharge** of such convict; said warrant shall in all cases restore the prisoner to civil rights the same as though a pardon had been issued.

Secs. 6204 to 6206. "An act to provide for the **pardon of convicts** from the penitentiary in certain cases." 1889, p 387. In force June 30.

6204. That on the **4th** day of **July** in each year the governor of this state may in his discretion grant and issue an unconditional **pardon to** two **convicts** in the penitentiary who have been confined therein for ten (10) years or more, and whose conduct while incarcerated in the penitentiary has been such as to entitle him or her to the benefits of the good time act.

6205. Said **pardons** shall be issued upon the written **recommendation** of the warden of the penitentiary, the attorney general, secretary of state, and the chief justice of the supreme court.

6206. This **act** shall not be **construed** or taken to abridge or deny the power now vested in the governor to grant pardons, but shall be an addition thereto.

Sec. 570 repealed the following: R. S. 1866, secs. 34-36, p. 11; ch. 21, p. 176; sec. 109, p. 227; secs. 107, 110, pp. 340-1; sec. 12, p. 344; crim. code, p. 592 *et seq.*, except ch. 29, p. 671. 1867 (Ter.), p. 5. 1867 (State), p. 46, as amended 1871, p. 80. 1869, p. 19, "An act to prohibit the sale of intoxicating liquors on days of election;" p. 81, "An act to punish offenders against chastity, morality, and decency," as amended 1870, p. 6; p. 94, "An act to amend sec. 20, sec. 4, crim. code;" secs. 31-38, 40, 43-50, pp. 105-9; sec. 103, pp. 214-15. 1871, p. 79, "An act in relation to persons imprisoned under sentence for offenses against the laws of Nebraska;" pp. 84 and 119, acts relative to justices of the peace; p. 118, act relative to counsel for indigent prisoners; p. 128, act to protect certain birds, and all acts in conflict; *Provided*, That the validity of such acts so repealed shall be saved and continued to the extent described in section 255.

CHAPTER LIII.—ERRORS FROM INFERIOR COURTS.

Secs. 6207 to 6212. "An act to provide for **reviewing on error** all **criminal cases** before county judges, justices of the peace, police magistrates, and all other courts inferior to the district court, wherein the accused shall be convicted and adjudged to pay a fine or to be imprisoned, or both." 1883, p. 330. In force June 1.

6207. That **in all criminal** cases tried before county judges, police judges, justices of the peace, police magistrates, and all other courts inferior to the district court, wherein the accused shall be convicted of a violation of any law of this state, or of an ordinance of any municipal corporation in this state, and adjudged to pay a fine or to be imprisoned, or both, such **judgment may be reviewed** on error in the district court of the county in which any such trial and conviction may be had.

6208. On application by or on behalf of such convicted person to any such officer or court before whom such trial and conviction may have been had, and upon tender of the legal fees, such officer shall make and deliver to such convicted person or his counsel a complete certified **transcript** of the judgment and all docket entries made on the trial of such case, and on receipt of a copy of the summons, as hereinafter set forth, shall forward to the clerk of the district court the original papers in the case.

6209. The proceeding to review any such judgment shall be by **petition in error,** to which shall be attached such transcript, and also any original papers received by the clerk, and the court in which the review is sought may, by summary process, compel a more complete record to be furnished and such original papers to be forwarded.

6210. When such petition and precipe are filed in any court, a **summons in error,** returnable in thirty days, shall be issued by the clerk, unless the judge of such court prescribe another day for the return, which summons shall be directed to the sheriff of the county in which the district attorney resides, containing such description of the judgment as to identify it, reciting the fact that a petition in error has been filed, and command such sheriff to notify the district attorney of the time it will be for hearing; and if original papers are required, it shall command the sheriff to notify the officer in whose possession they are to forward them to such clerk. In case the district attorney should reside in some county other than the one in which such proceedings in error are to be had, the clerk may send the summons in error by mail to the proper sheriff, who may return the same by mail to the clerk of the court from which it was issued.

6211. Upon the hearing of a petition in error, the court may affirm **the judgment** or reverse it in whole or in part, and order the accused to be discharged.

6212. No **sentence** or judgment shall be **suspended** or execution stayed until the defendant shall enter into a **recognizance** before the clerk of the district court where his petition in error is filed, conditioned that the defendant will prosecute his petition in error to effect, and surrender himself to the custody of the proper officer of the county in which the conviction was had, in case the judgment against him be not reversed or a new trial ordered.

CHAPTER LIV.—PROSECUTION OF OFFENSES BY INFORMATION.

Secs. 6213 to 6220. "An act to provide for **prosecuting offenses on information** and to dispense with the calling of grand juries, except by order of the district judges." 1885, p. 397. In force June 5.

6213. That the several **courts** of this state shall possess and may exercise the same **power** and jurisdiction to **hear,** try, and determine **prosecutions upon information,** for crimes, misdemeanors, and offenses, to issue writs and process, and do all other acts therein, as they possess and may exercise in cases of like prosecutions upon indictments.

Murder may be prosecuted by information instead of by indictment. **29,** 440 (45 N. W., 451).

6214. All **informations** shall be filed during term, in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant; he shall subscribe his name thereto, and endorse thereon the names of the witnesses known to him at the time of filing the same; and at such time before the trial of any case as the court may, by rule or otherwise, prescribe, he shall endorse thereon the names of such other witnesses as shall then be known to him.

Information must allege that crime was committed within the jurisdiction of the court. **22,** 420 (35 N. W., 202). Names must be endorsed on the information before the trial term. **19,** 648 (28 N. W., 304). Failure to endorse name of witness on information, ground for new trial. **20,** 517 (31 N. W., 5). But if testimony not material, not error. **24,** 724 (40 N. W., 302). Names of witnesses cannot be added to information unless it be shown that they were not known before. **27,** 732-4 (43 N. W., 747; 44 N. W., 108). Endorsement on day of trial of name of witness who was not called, not error. **29,** 444 (45 N. W., 451). Witnesses used in rebuttal of a collateral issue raised by defendant need not be endorsed. **23,** 311 (36 N. W., 527).

6215. **All information** shall be **verified** by the oath of the prosecuting attorney, complainant, or some other person, and the offenses charged therein shall be stated with the same fullness and precision in matters of substance as is required in indictments in like cases. Different offenses and different degrees of the same offense may be joined in one information, in all cases where the same might by different counts in one indictment; and in all cases a defendant or defendants shall have the same rights, as to proceedings therein, as he or they would have if prosecuted for the same offense upon indictment.

6216. That the **provisions** of chapters XL, XLI, XLII, XLIII, XLIV, XLV of the Criminal Code, **in relation to indictments,** and all other provisions of law applying to prosecutions upon indictments to writs, and process therein, and the issuing and service thereof, to motions, pleadings, trials, and punishments or the execution of any sentence and to all other proceedings in cases of indictments, whether in the court of original or appellate jurisdiction, shall in the same manner and to the same extent, as near as may be, **apply to informations,** and all prosecutions and proceedings thereon.

6217. Any **person** who may, according to law, be committed to jail, or become **recognized** or held to bail with sureties for his appearance in court to answer to any indictment, may, in like manner, so be committed to jail or become recognized and held to bail for his appearance, to answer to any information or indictment, as the case may be.

6218. It shall be the **duty of** the **prosecuting attorney** of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense wherein the offender shall be committed to jail, or become recognized or held to bail, and if the prosecuting attorney shall determine in any such case that an information ought not to be filed, he shall make, subscribe, and file with the clerk of the court a statement in writing, containing his reasons, in fact and in law, for not filing an information in such case, and that such statement shall be filed at and during the term of court at which the offender shall be held for his appearance; *Provided,* That in such case such court may examine said statement, together with the evidence filed in the case, and if, upon such examination, the court shall not be satisfied with said statement, the prosecuting attorney shall be directed by the court to file the proper information, and bring the case to trial.

Information cannot be made against one whom the supreme court has found no cause of action. **22,** 147 (34 N. W., 346.)

6219. **Grand juries** shall **not hereafter** be **drawn,** summoned, or required to attend at the sittings of any court within this state, as provided by law, unless the judge thereof shall so direct by writing, under his hand, and filed with the clerk of said court.

They cannot be now summoned from bystanders in an emergency. **18,** 402 (25 N. W., 527).

6220. **No information** shall be filed against any person for any offense

until such person shall have had a preliminary **examination** therefor as provided by law, before a justice of the peace or other examining magistrate or officer, unless such person shall waive his right to such examination; *Provided, however*, That information may be filed without such examination against fugitives from justice, and any fugitive from justice against whom an information shall be filed may be demanded by the governor of this state of the executive authority of any other state or territory, or of any foreign government, in the same manner, and the same proceedings may be had thereon, as provided by law in like cases of demand upon indictment filed.

Deputy prosecuting attorney cannot file information. 22, 150 (34 N. W., 346). Cited, 28, 349 (44 N. W., 443).

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Be it Remembered: That at the regular June, 1890, term of the District Court of the First District began and holden in Beatrice, Gage County, Nebraska, the following among other proceedings were had and entered on record, to-wit:

To Hon. A. Hardy, Pres. of the Gage County Bar Association:

The undersigned committee appointed by you to declare the opinion of the attorneys of Gage County as to the "Law of Replevin" recently written by Judge J. E. Cobbey of this bar, respectfully report that we have carefully examined the said work, and agree in the opinion that it excels all other books upon the subject in the following respects:

In conciseness of statement, method of arrangement, number and accuracy of references, and thoroughness of index.

We think it worthy a place in all the libraries of the country, and that no practicing lawyer can well afford to be without it.

Taking a just pride in Judge Cobbey's work, we recommend that each member of the Gage County Bar sign his name to this report, and that Judge J. H. Broady be then requested to cause the same to be spread at length upon the records of the District Court of our said county.

J. N. Rickards,
Charles O. Bates, } *Committee.*
N. K. Griggs,

We fully endorse the above report.

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Hazlett & Bates,
N. K. Griggs,
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D. S. Hardin,
W. C. Le Hane.

Gage County Bar.

President A. Hardy moves in open court that the report be adopted, and the report spread at large upon the court records, and that a certified copy be furnished Judge Cobbey under the seal of the court.

These resolutions approved, endorsed, and the motion complied with, and it is so ordered this June 25, 1890.

Court Seal and Certificate by
F. H. Holt, *Clerk.*

J. H. Broady,
Judge.

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State of Nebraska,
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